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GUARANTY AGREEMENT

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INTERSTATE COMMERCE COMMISSION

GUARANTY AGREEMENT, dated *July 16*, 1975, among the DEPUTY FEDERAL RAILROAD ADMINISTRATOR of the DEPARTMENT OF TRANSPORTATION of the UNITED STATES OF AMERICA, as Guarantor (the "Administrator"), pursuant to Section 602 of the Rail Passenger Act, as amended (the "Act"), SEATTLE-FIRST NATIONAL BANK, a national banking association, not in its individual capacity but as Trustee under a Trust Agreement dated as of May 1, 1975 (the Trustee and its successors and assigns being hereinafter called the "Trustee"), and FEDERAL FINANCING BANK, an instrumentality of the United States of America, as assignee of the Conditional Sale Agreement, as hereinafter defined (such Bank and its successors and assigns being hereinafter called "Federal Financing Bank").

W I T N E S S E T H:

WHEREAS, in order to assist in carrying out its responsibility to provide intercity rail passenger service in accordance with the provisions of the Act, National Railroad Passenger Corporation (hereinafter called the "Railroad"), a corporation organized under the Act and the laws of the District of Columbia, has entered into a Conditional Sale Agreement (the "Conditional Sale Agreement") dated as of June 1, 1975, with General Electric

Company, a copy of which is attached hereto as Exhibit A, to purchase certain locomotives (the "Equipment"), a Sale and Lease Back Agreement (the "Sale and Lease Back Agreement") dated as of June 1, 1975, with the Trustee, a copy of which is attached hereto as Exhibit B, to sell the Equipment to the Trustee and lease the Equipment back, and an Equipment Lease (the "Equipment Lease") dated as of June 1, 1975, with the Trustee, a copy of which is attached hereto as Exhibit C, covering the terms of the lease of the Equipment; and

WHEREAS, the Conditional Sale Agreement provides for the payment of a portion of the purchase price for the Equipment, aggregating a maximum of Ten Million Six Hundred Thirty-six Thousand Eight Hundred and Seventy-five Dollars (\$10,636,875.00) in 26 semiannual installments (the "Conditional Sale Indebtedness") together with interest thereon; and

WHEREAS, the Equipment Lease provides for the payment of various amounts by the Railroad to the Trustee for the lease of the Equipment, including the amounts hereinafter referred to as the Guaranteed Lease Obligations; and

WHEREAS, General Electric Company has assigned certain of its rights, including the right to receive payment of the Conditional Sale Indebtedness, together with interest thereon, to the Federal Financing Bank pursuant to an Agreement and Assignment

(the "Agreement and Assignment") dated as of June 1, 1975, a copy of which is attached hereto as Exhibit D; and

WHEREAS, the Secretary of Transportation of the United States of America (the "Secretary") has duly designated the Administrator as his delegate, under the authority of Section 102(2) of the Act and 49 U.S.C. 1657(e), to carry out certain functions vested in the Secretary by the Act, and the Administrator is thereby duly authorized with the approval of the Secretary of the Treasury to make this guaranty pursuant to Section 602 of the Act, and the Secretary of the Treasury has duly given such approval;

WHEREAS, the entering into of the aforementioned transactions by the Trustee and the Federal Financing Bank is, in the case of each of them, conditioned upon and in consideration of the participation of the other, and the receipt of the guaranty set forth herein;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants hereinafter set forth, the parties agree as follows:

Section 1. Guarantee of Conditional Sale Indebtedness. The Administrator hereby guarantees the prompt payment by the Railroad of the installments of the Conditional Sale Indebtedness,

together with interest thereon, if any, when and as the same shall become due and payable (whether at maturity, by acceleration or pursuant to other provisions of the Conditional Sale Agreement, or otherwise) in accordance with the terms of the Conditional Sale Agreement.

Section 2. Guarantee of Lease Payments. The Administrator hereby guarantees to the Trustee the prompt payment by the Railroad of the amounts payable by the Railroad under the following provisions of the Equipment Lease, (except amounts accruing thereunder with respect to Modifications, as defined in the Equipment Lease) to the extent unpaid as of the time the Administrator makes payment pursuant to this Guaranty: (a) Section 2.1, (except amounts payable under Section 2.1(c) pursuant to Section 10.2, 15.1(iv) and (to the extent that amounts due thereunder exceed amounts payable under Section 2(c) hereof) Section 21); (b) Section 16 (except any amounts payable under 16(b)(3)(iv) or 16(b)(4)(iii) pursuant to Sections 4.4, 6, 9, 10.2, 15.1(iv), or 24.5); (c) interest at the Overdue Rate (as defined in the Equipment Lease) payable by the Railroad under Section 21 on any amounts guaranteed hereunder, and (d) Section 22.2, when and as the same shall become due and payable (whether at maturity, by acceleration or pursuant to other provisions of the Equipment Lease, or otherwise) in accordance with the terms of the Equipment Lease, all of which amounts may be hereinafter or elsewhere referred to as the Guaranteed Lease Obligations.



It is understood and agreed that to the extent amounts are payable hereunder pursuant to more than one section of the Equipment Lease, or may be characterized hereunder as either rent or indemnities, the Trustee shall be entitled to recover such amount only under one such section or one such characterization, it being the intent of this paragraph to preclude the double recovery of such amounts from the Administrator.

Section 3. Guaranty is Unconditional. The guaranty hereunder is an absolute and unconditional guaranty of the amounts guaranteed, is in no way conditioned or contingent upon any attempt to collect from the Railroad or upon any other condition or contingency, and shall remain in full force and effect without regard to, and shall not be affected or impaired by, any condition, contingency or occurrence, including, without limitation, (i) any amendment or modification of or addition or supplement to the Conditional Sale Agreement, the Equipment Lease or the Sale and Lease Back Agreement; (ii) any extension, indulgence, waiver or other action or inaction with respect to the Conditional Sale Agreement, the Equipment Lease or the Sale and Lease Back Agreement; (iii) any default by the Railroad under, or any invalidity or unenforceability of, or any irregularity or other defect in, the Conditional Sale Agreement, the Equipment Lease or the Sale and Lease Back Agreement or the use by the Railroad of the proceeds of the moneys made available to or for the benefit of the

Railroad, either under the Act or otherwise; (iv) any exercise or nonexercise of any right, remedy, power or privilege under this Agreement, the Conditional Sale Agreement, the Equipment Lease or the Sale and Lease Back Agreement; (v) any bankruptcy, insolvency, reorganization merger, consolidation, dissolution or transfer of assets or similar proceeding involving or affecting the Railroad; (vi) any failure to furnish the Administrator with copies of correspondence relating to events of default as provided in Section 8 hereof; (vii) the impairment by the Federal Financing Bank of the Administrator's rights and security interest conveyed by the Federal Financing Bank under Section 5 hereof; or (viii) any amendment to or repeal of the Act. This guaranty may not be terminated, cancelled or otherwise revoked, shall be conclusive evidence of compliance by this guaranty with the provisions of the Act and this guaranty shall be valid and incontestable in the hands of the Trustee and the Federal Financing Bank, except for fraud or material misrepresentation on the part of the party seeking enforcement hereof with respect to its claim hereunder.

#### Section 4. Payments by the Administrator.

(a) In the event that the Railroad shall fail to pay when due any required installment of the Conditional Sale Indebtedness, or any interest thereon, the United States of America shall, after the expiration of any grace period provided in the

Conditional Sale Agreement in respect thereof, upon the Administrator's receipt of written demand for payment by the obligee of the Conditional Sale Indebtedness, promptly (and, in any event, within 90 days after receipt of such demand or, if such obligee is an agency or instrumentality of the United States, immediately upon such demand) pay to such obligee, in cash, an amount equal to (i) the then unpaid Conditional Sale Indebtedness and the interest accrued thereon to the date of payment by the Administrator; provided, however, that the Federal Financing Bank shall have assigned to the Administrator, as of the date of such demand, all of its right, title and interest in and to the Conditional Sale Agreement and in any other instrument taken or assigned as security for the Conditional Sale Indebtedness pursuant to an Assignment in the form of the assignment attached hereto as Exhibit E, except as provided in such Assignment, or (ii) the amount of such installment of the Conditional Sale Indebtedness and interest thereon if any, (including interest at 7.92% as provided in Section 3.7 of the Conditional Sale Agreement) from the due date thereof under the Conditional Sale Agreement to the date of payment thereof by the Administrator; provided, however, that the option contained in this clause (ii) shall not be available to the Administrator if the obligee of the Conditional Sale Indebtedness at the time of the occurrence of such event of default is not an agency or instrumentality of the United States; further provided, that if pursuant to Section 4(b) hereof, the Administrator shall make any payment to the Trustee in respect of an event of

default under the Equipment Lease, the Administrator shall at the time it makes such payment to the Trustee, pay to the obligee of the Conditional Sale Indebtedness the unpaid amount of the Conditional Sale Indebtedness and interest thereon, if any, pursuant to and subject to the conditions of clause (i) of this Section 4(a). Payment by the Administrator under this subsection 4(a) shall constitute the sole and exclusive remedy of the obligee of the Conditional Sale Indebtedness (in lieu of the remedies provided in Section 16 of the Conditional Sale Agreement and in lieu of all other remedies of a secured party at law, in equity or otherwise) by reason of an event of default under the Conditional Sale Agreement; provided, however, that this sentence shall not preclude any action for damages or injunctive relief (but not affecting the Railroad's right to the use and possession of the Equipment under Section 10 of the Conditional Sale Agreement, and it shall be assumed for this purpose that the Railroad is not in default under such Section 10) which the Federal Financing Bank may elect to institute against the Railroad based upon any such event of default; further provided, that if the Federal Financing Bank by the exercise of any of its rights under this subsection 4(a) recovers any portion of the Conditional Sale Indebtedness, the Administrator's obligation under this Agreement shall be reduced by such amount. The Railroad's obligations under Section 3.3(b) of the Conditional Sale Agreement and that portion of the rent due pursuant to Section 2.1 of the Equipment Lease equal

thereto shall be reduced by the amount paid by the Administrator pursuant to clause (ii) of this Section 4(a); provided, however, that no such reduction shall be made for interest paid by the Administrator at the Debt Rate on any installment of Conditional Sale Indebtedness.

(b) In the event that the Railroad shall fail to pay when due any Guaranteed Lease Obligation, the United States of America shall, after the expiration of any grace period provided in the Equipment Lease in respect thereof, upon the Administrator's receipt of written demand for payment by the Trustee, promptly (and, in any event, within 90 days after receipt of such demand) pay to the Trustee, in cash, an amount equal to the Guaranteed Lease Obligation with respect to which such demand shall have been made, minus (to the extent the Guaranteed Lease Obligation includes the same) the amount, if any, paid by the Administrator to the obligee of the Conditional Sale Indebtedness pursuant to subsection 4(a) hereof; provided, however, that the Trustee shall have assigned to the Administrator concurrently with the payment of the Guaranteed Lease Obligation covered by such demand, all its right, title and interest in and to the Equipment Lease pursuant to an Assignment in the form of the

assignment attached hereto as Exhibit F, except as provided in such Assignment. The Trustee agrees that prior to making any demand under this subsection 4(b) and during such 90-day period the Trustee will not without the consent of the Administrator (i) exercise any remedies provided for in paragraphs (2), (3) or (4) of Section 16(b) of the Equipment Lease other than the giving of notices, nor (ii) interfere with the Railroad's use or possession of the Equipment under Section 19.2 of the Equipment Lease (and unless the Administrator should otherwise elect it shall be assumed for this purpose that the Railroad is not in default under such Section 19.2 until after the expiration of such 90-day period). If the Trustee by the exercise of any remedies permitted to be exercised by this subsection 4(b) obtains any amount included in the Guaranteed Lease Obligations, the Administrator's obligation under this Agreement shall be reduced by such amount. Payments of any amounts to the Federal Financing Bank pursuant to subsection 4(a) hereof pursuant to notice of an event of default under the Conditional Sale Agreement shall not be construed to cure the default under the Equipment Lease, and Trustee, at its sole option, shall be entitled to proceed to make demand upon the Administrator pursuant to this subsection 4(b) as if no payment had been made under subsection 4(a).

(c) The Administrator unconditionally waives any other rights he may have to notice of default, presentment to and demand for payment, protest for nonpayment or dishonor and all other notices which may be required by any state or Federal law. This waiver shall not be construed to limit in any way the Administrator's right to bring suit against any person for breach of Section 8 hereof. To enable payment under this Section 4, the Secretary (or the Administrator on his behalf) shall promptly issue such notes or obligations to the Secretary of the Treasury in an amount which, together with other funds, if any, which are then available to the Administrator or the Secretary under Section 602 of the Act, shall be sufficient to make all payments required by this Agreement.

(d) This guaranty agreement constitutes a valid, binding and enforceable general obligation of the United States of America backed by the full faith and credit of the Government of the United States.

Section 5. Assignment by the Federal Financing Bank of Certain Rights. The Federal Financing Bank hereby irrevocably conveys to the Administrator all the rights of the Federal Financing Bank under Section 16 of the Conditional Sale Agreement and the security interest of the Federal Financing Bank under the Conditional Sale Agreement, and any and all other rights which

the Federal Financing Bank may have taken or received as security for the payment of the Conditional Sale Indebtedness. The Federal Financing Bank further agrees that it will not take any action at any time hereafter that would impair the Administrator's rights and security interest conveyed to the Administrator under this Section 5. In the event that the Administrator shall not make payment to the Trustee of any Guaranteed Lease Obligation within 90 days after the Trustee shall have made demand upon the Administrator therefor under subsection 4(b) hereof, then any rights and security interest conveyed by the Federal Financing Bank to the Administrator shall be deemed to have become null and void and shall automatically cease to exist and the Administrator hereby waives, upon the happening of such event, and for such time thereafter that any Guaranteed Lease Obligation remains unpaid, all his rights and security interest under this Section 5, and all rights (including any rights to which the Administrator would otherwise have succeeded by subrogation) which the Administrator may have obtained pursuant to Section 4, it being expressly understood and agreed that the Administrator's right, title and interest in and to the Equipment shall, upon the happening of such event, be and remain subordinate to the rights of the Trustee to the extent that and for so long as any part of the Guaranteed Lease Obligation shall thereafter remain unpaid. In recognition of the rights and security interest transferred by the Federal Financing Bank under this Section 5, the Administrator has released, by an appropriate document filed under the



Interstate Commerce Act, Section 20c, any other lien, security interest or other interest which he may otherwise have had, under the Security Agreements dated August 7, 1972 and December 27, 1973 (affirmed by Agreements dated July 10, 1974, October 11, 1974, and December 31, 1974, and amended by Agreements dated January 29, 1975, March 20, 1975, and April 16, 1975), between the Railroad and the Administrator, or otherwise, with respect to the Equipment to be acquired by the Railroad pursuant to the Conditional Sale Agreement.

Section 6. Representations by Administrator. The Administrator represents and warrants that (a) this Agreement has been duly authorized, executed and delivered by the Administrator in accordance with the provisions of the Act and the delegation of authority by the Secretary thereunder, and is enforceable in accordance with its terms, and the guaranty contained in this Agreement has been approved by the Secretary of the Treasury, and (b) \$16,251,360.75 of the guaranty authority available to the Railroad under Section 602 of the Act has been reserved (together with an amount equal to accrued and unpaid rent at the Overdue Rate as provided in the Equipment Lease), first, for the payment of the Conditional Sale Indebtedness, together with interest thereon, and the balance for the payment of the Guaranteed Lease Obligations, in an aggregate amount equal to the applicable amounts set forth in Schedule C to the Equipment Lease. The

guaranty authority so reserved shall in no event be less than that required in order fully to discharge the obligations guaranteed hereunder. The Administrator agrees that no payments made to Federal Financing Bank, whether or not considered made pursuant to Section 4(a) hereof, shall be applied to reduce the guaranty authority here reserved, unless such payment has been made pursuant to notice of the occurrence of an event of default under the Conditional Sale Agreement, and demand for payment pursuant to Section 4(a).

Section 7. Maximum Obligation. The Administrator's obligation hereunder shall not at any time exceed the amount set forth in Schedule C for the applicable period with respect to which payment hereunder is made, together with an amount equal to accrued and unpaid rent at the Overdue Rate as provided in the Equipment Lease.

Section 8. Guaranty Fee. Within 10 days following receipt by the Trustee, acting itself or through others, of each rental payment made under the Equipment Lease, the Trustee shall pay to the Administrator a guaranty fee calculated at the annual rate of 1/4 of one percent of the amount shown in Schedule C to the Equipment Lease for the semiannual period preceding such rental payment; it being understood that the payment of the guaranty fee

is not a condition of the obligation of the Administrator to make the guaranteed payments under subsections 4(a) and 4(b) hereof.

Section 9. Notices. All notices and other communications hereunder shall be in writing and shall, except as otherwise provided in Section 4 hereof, be deemed to have been given when delivered or mailed by first class registered or certified mail, postage prepaid, addressed (a) if to the Administrator, Federal Railroad Administration of the Department of Transportation, 400 - 7th Street, S.W., Washington, D.C. 20590, or at such other address as the Administrator shall have furnished to the Railroad, the Federal Financing Bank and the Trustee in writing, (b) if to the Trustee, as set forth in Section 24.6 of the Equipment Lease or (c) if to the Federal Financing Bank, in care of Department of the Treasury, Main Treasury Building, Room 3124, Washington, D.C. 20220, Attention of Secretary, Federal Financing Bank, or at such other address as the Federal Financing Bank shall have furnished to the other parties hereto in writing. Copies of all correspondence between the Federal Financing Bank and the Railroad and between the Trustee and the Railroad relating to any event of default or threatened event of default shall be delivered or mailed, as above provided, by the Federal Financing Bank or the Trustee, as the case may be, to the Administrator.

Section 10. Endorsement of Guaranty. The Administrator agrees to endorse (i) on the Agreement and Assignment and on the Equipment Lease the guaranty provided for herein in the forms appended to such documents and (ii) for the benefit of any assignees of the Trustee or the Federal Financing Bank on the instruments of assignment to such assignees a comparable guaranty.

Section 11. Miscellaneous. This Agreement embodies the entire agreement and understanding among the Administrator, the Trustee and the Federal Financing Bank with respect to the Administrator's guaranty set forth herein and supersedes all prior agreements relating to such guaranty and shall be governed by laws of the District of Columbia. No variation or modification of this Agreement shall be valid unless in writing and signed by duly authorized officers of all the parties hereto; provided, that it is recognized by all parties hereto that Modifications to the Equipment subject to the Equipment Lease may become necessary or desirable from time to time, and amendments to this Guaranty Agreement are contemplated from time to time to guarantee payment of the amounts which may become due with respect to the same. All the terms of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto. The headings in this Agreement are for convenience of reference only and shall not limit or

otherwise affect any of the terms hereof. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth above.

Deputy FEDERAL RAILROAD ADMINISTRATOR

By Asaph A. Hall  
Deputy Federal Railroad  
Administrator, Guarantor

ATTEST:

Christopher S. Muffitt  
~~Authorized Officer~~  
Counsel FRA

SEATTLE-FIRST NATIONAL BANK,  
a National Banking Association,  
as Trustee

By [Signature]  
Authorized Officer  
ASST. VICE PRESIDENT  
& TRUST OFFICER

ATTEST:

[Signature]  
Authorized Officer  
COOPERATIVE TRUST OFFICER  
SEATTLE-FIRST NATIONAL BANK

FEDERAL FINANCING BANK

By R. M. John  
Authorized Officer

ATTEST:

[Signature]  
Authorized Officer

CITY OF WASHINGTON, )  
 ) ss.  
DISTRICT OF COLUMBIA)

On this 17<sup>th</sup> day of JULY, 1975, before me personally appeared ASAPH H. HALL, to me personally known, who, being by me duly sworn, says that he is the Deputy Administrator of the Federal Railroad Administration, that the foregoing instrument was signed by him by authority duly delegated to him by the Secretary of Transportation; and he acknowledged that the execution of the foregoing instrument was his free act and deed as the Federal Railroad Administrator.

DEPUTY

Ray Rogers  
Notary Public

[Seal]

My Commission Expires: My Commission Expires April 30, 1977

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF KING )

On this 18<sup>th</sup> day of July, 1975, before me personally appeared R.M. Olson, to me personally known, who, being by me duly sworn, says that he is an Authorized Officer of SEATTLE-FIRST NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Notary Public

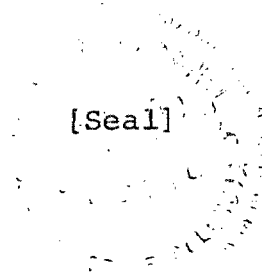
[Seal]

My Commission Expires: 9/15/25

CITY OF WASHINGTON )  
 ) ss.  
DISTRICT OF COLUMBIA)

On this 8th day of July, 1975, before me personally appeared Ralph M. Fisher, to me personally known who, being by me duly sworn, says that he is a Vice President

of FEDERAL FINANCING BANK, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

 [Seal]  
Wayne Russell  
Notary Public

My Commission Expires: 9/30/76

# CONDITIONAL SALE AGREEMENT

Dated as of June 1, 1975

*between*

**General Electric Company**

*and*

**National Railroad Passenger Corporation**

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**Guaranty by Department of Transportation**

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**25 General Electric Diesel-Electric Locomotives**



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## CONDITIONAL SALE AGREEMENT

CONDITIONAL SALE AGREEMENT dated as of June 1, 1975, between GENERAL ELECTRIC COMPANY, a New York corporation (hereinafter called the "Builder" or "Vendor," as more particularly set forth in Section 22 hereof), and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act, as amended, and the laws of the District of Columbia (hereinafter called the "Railroad").

WHEREAS, the Builder has agreed to construct, sell and deliver to the Railroad, and the Railroad has agreed to purchase, the railroad equipment described in Schedule A hereto (hereinafter individually called a "Unit" or "Unit of the Equipment" and collectively called the "Equipment"); and

WHEREAS, pursuant to the terms of a Sale and Lease Back Agreement (hereinafter called the "Sale and Lease Back Agreement") dated as of June 1, 1975, between the Railroad and Seattle-First National Bank, a national banking association, as Trustee (hereinafter, together with any successor thereto, called the "Trustee") under a Trust Agreement dated as of May 1, 1975, the Railroad has agreed to sell to the Trustee, subsequent to its purchase hereunder and as permitted by Section 14 hereof, all of its rights, title and interest as the owner of the Equipment and certain of its rights under this Agreement, and to lease the Equipment back from the Trustee pursuant to the terms of an Equipment Lease (hereinafter called the "Equipment Lease") dated as of June 1, 1975, between the Railroad and the Trustee, and the Trustee has agreed to purchase the Equipment and such rights from the Railroad, to lease the Equipment back to the Railroad pursuant to the Equipment Lease and to pay for the Equipment in the manner set forth in Section 3 of the Sale and Lease Back Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

**SECTION 1. Construction and Sale.** Pursuant to this Agreement, the Builder shall construct the Equipment at its plant in Erie, Pennsylvania, and will sell and deliver to the Railroad, and the Railroad will purchase from the Builder and accept delivery of and pay for (as hereinafter provided) the Equipment, each Unit of which shall be constructed in accordance with the specifications referred to in Schedule A hereto and in accordance with such modifications thereof as may be agreed upon in writing between the Builder and the Railroad (which specifications and modifications, if any, are hereinafter called the "Specifications"). The design, quality and component parts of each Unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications reasonably interpreted as being applicable to railroad equipment of the character of such Units of the Equipment, and each Unit of the Equipment will be new railroad equipment.

### **SECTION 2. Inspection and Delivery.**

**2.1** The Builder will deliver the Units of the Equipment to the Railroad at the place specified in Schedule A hereto, in accordance with the delivery schedule set forth in Schedule A hereto; *provided, however,* that the Builder shall have no obligation to deliver any Unit of the Equipment hereunder at any time after any event of default (as described in Section 15 hereof), or event which with the lapse of time or demand could constitute such an event of default, shall have occurred.

**2.2** The Builder's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Builder's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

2.3 Notwithstanding the preceding provisions of this Section 2, any Unit of the Equipment not delivered, accepted and settled for pursuant to Section 3 hereof after June 1, 1975, and on or before December 31, 1975, shall be excluded herefrom. If any Unit of the Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Builder shall execute an agreement supplemental hereto limiting this Agreement to the Units of the Equipment not so excluded herefrom. If the Builder's failure to deliver a Unit of Equipment so excluded from this Agreement resulted from one or more of the causes set forth in the immediately preceding paragraph, the Railroad shall nevertheless be obligated to accept such Unit of the Equipment and pay the full purchase price therefor, determined as provided in this Agreement, if and when such Unit of the Equipment shall be completed and delivered by the Builder, such payment to be in cash on the delivery of such Unit of the Equipment, either directly or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder.

2.4 During construction, the Equipment shall be subject to inspection and approval by the authorized inspectors of the Railroad and the Builder shall grant to such authorized inspectors reasonable access to its plant. The Builder agrees to inspect all materials used in the construction of the Equipment and workmanship in accordance with the standard quality control practices of the Builder. Upon completion of each Unit or of a number of Units of the Equipment, such Unit or Units shall be presented to an inspector of the Railroad for inspection at the place specified for delivery of such Unit or Units, and if each such Unit conforms to the Specifications, requirements and standards applicable thereto, such inspector, who shall be an authorized representative of the Railroad, shall execute and deliver to the Builder a certificate of acceptance in the form of Exhibit 1 hereto (hereinafter called the "Certificate of Acceptance") stating that such Unit or Units have been inspected and accepted on behalf of the Railroad and are marked in accordance with Section 6 hereof; *provided, however*, that the Builder shall not thereby be relieved of its warranties referred to in Schedule B hereto, which is hereby incorporated by reference.

2.5 On delivery of each such Unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such Unit; *provided, however*, that the Builder shall not thereby be relieved of its warranties referred to in Schedule B hereto.

### SECTION 3. *Purchase Price and Payments.*

3.1 The base price or prices per Unit of the Equipment, exclusive of interest, are set forth in Schedule A hereto. The base price or prices, which shall exclude freight charges, if any, from the Builder's plant to the point of delivery, are subject to such increase or decrease as may be agreed to by the Builder and the Railroad. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased. If on any Closing Date (as hereinafter defined in this Section 3) the Average Cost (as hereinafter defined) would, but for the provisions of this sentence, exceed \$610,000.00, the Builder (and any assignee of the Builder) will, upon request of the Railroad, enter into an agreement excluding from this Agreement such Unit or Units of the Equipment then proposed to be settled for and specified by the Railroad, as will, after giving effect to such exclusion, reduce such Average Cost to not more than \$610,000.00, and the Railroad agrees to purchase any such Unit or Units so excluded from this Agreement from the Builder for cash on the date such Unit or Units would otherwise have been settled for under this Agreement either directly, or, in case the Railroad shall arrange therefor, by means of a conditional sale agreement, equipment trust or such other appropriate method of financing as the Railroad shall determine and as shall be reasonably acceptable to the Builder. *Provided, however*, that any waiver by the Railroad of its right in the immediately preceding sentence to exclude a Unit or Units of the Equipment from this Agreement shall not be deemed a waiver of such right with respect to any other Unit or Units of the Equipment for which settlement is then or thereafter being made. "Average Cost" shall mean that amount determined by dividing

(x) the aggregate of the Invoiced Purchase Price (as hereinafter defined) for which settlement has theretofore been and is then being made under this Agreement by (y) the number of Units of the Equipment for which settlement has theretofore been and is then being made under this Agreement.

3.2 The Equipment shall be settled for in such number of groups of the Equipment delivered to and accepted by the Railroad after June 1, 1975, and on or before December 31, 1975, as may be agreed upon by the parties hereto (each such group being hereinafter called a "Group").

3.3 The Railroad hereby acknowledges itself to be indebted to the Vendor in the amount of, and hereby promises to pay in cash to the Vendor at such place as the Vendor may designate, the Purchase Price of the Equipment as follows:

a. On each Closing Date (as hereinafter defined) with respect to a Group (i) an amount equal to 30.25% of the aggregate Purchase Price of the units in such Group, plus (ii) the amount by which (x) the Purchase Price of all units of Equipment for which settlement has theretofore and is then being made, as set forth in the invoice or invoices therefor (said invoiced prices being herein called the "Invoiced Purchase Prices"), exceeds (y) the sum of \$10,636,875.00 and any amount or amounts previously paid or payable with respect to the Invoiced Purchase Prices pursuant to this subparagraph (a); and

b. In twenty-six (26) consecutive semiannual installments, as hereinafter provided, an amount equal to the aggregate Purchase Price of the Units of the Equipment in the Group for which settlement is then being made, less the aggregate amount paid or payable with respect thereto pursuant to subparagraph (a) of this paragraph.

3.4 The installments of the portion of the Purchase Price payable pursuant to subparagraph (b) of the preceding paragraph (said portion of the aggregate Purchase Price for such Equipment being herein called the "Conditional Sale Indebtedness") shall be payable semiannually following December 31, 1975, on July 2 and December 31 of each year commencing July 2, 1976, (or if any such date is not a business day on the next succeeding business day), each such date being hereinafter called a "Payment Date." The unpaid balance of the Conditional Sale Indebtedness shall bear interest (i) from and including the Closing Date (as hereinafter defined) in respect of which such indebtedness was incurred until fully paid at the rate of 7.92% per annum (the "Debt Rate"). Interest incurred to December 31, 1975 shall be payable on that date and interest accruing on and after December 31, 1975 shall be payable on each Payment Date thereafter. The principal amount of Conditional Sales Indebtedness payable on each Payment Date shall be calculated on such a basis that the aggregate of the principal and interest payable on each Payment Date shall be substantially equal and such 26 installments of principal will completely amortize the Conditional Sale Indebtedness.

3.5 The term "Closing Date" with respect to any Group shall mean such date (after June 1, 1975, and on or prior to December 31, 1975), not more than ten business days following presentation by the Builder to the Railroad of the invoice or invoices and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Vendor at least three business days prior to the Closing Date designated therein; *provided, however*, that there shall not be more than one closing in any one calendar week. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in the city and state in which the principal office of the Vendor, the Trustee or the Railroad is located are authorized to remain closed.

3.6 Interest under this Agreement shall be calculated on the basis of a 365-day year and actual days elapsed.

3.7 The Railroad will pay, to the extent legally enforceable, interest at the rate of 7.92% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

3.8 All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Section 7 hereof, the Railroad shall not have the privilege of prepaying any installment of its indebtedness hereunder prior to the date it becomes due.

**SECTION 4. Taxes.** The Railroad agrees to pay and discharge (and does hereby agree to indemnify and hold the Vendor harmless from and against) all sales, use, personal property, excise, leasing, leasing use, stamp or other taxes, levies, imposts, duties, charges or withholdings of any nature (together with any penalties, fines or interest thereon, unless resulting from the Vendor's action or failure to act) imposed against the Railroad, the Vendor or the Equipment by any foreign, Federal, State or local governmental taxing authority upon or with respect to the Equipment or upon the purchase, ownership, delivery, lease, possession, rental, use, operation, return, sale or transfer of title to the Railroad under the terms hereof, or upon the rentals or receipts arising therefrom or the payments made hereunder (excluding, however, foreign, Federal, state and local taxes on, or measured by, the net income of the Vendor); *provided however*, that the Railroad shall not be required to pay or discharge any such tax, levy, impost, duty, charge or withholding so long as it shall, in good faith and by appropriate administrative or legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the security interest of the Vendor in the Equipment, and the Railroad shall reimburse the Vendor for any damages or expenses resulting from such failure to pay or discharge. The Railroad agrees to assist the Vendor in the preparation of and, when possible, to file on behalf of the Vendor, all required tax returns and reports relating to taxes for which the Railroad is responsible under this Section 4. The Vendor shall keep the Railroad informed of any claim made against the Vendor for the payment of any such tax, levy, impost, duty, charge or withholding. The obligations of the Railroad contained in this Section 4 shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of Vendor's security interest in, the Equipment, as provided in Section 5 hereof, or the termination of this Agreement in any manner whatsoever.

**SECTION 5. Title to and Security Interest in the Equipment.**

5.1 The Vendor shall and hereby does retain a security interest in the Equipment until the Railroad shall have made all its payments under this Agreement and shall have kept and performed all its agreements herein contained, notwithstanding the delivery of the Equipment to and the possession and use thereof by the Railroad as provided in this Agreement. Any and all additions to the Equipment and any and all replacements of parts of the Equipment and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement, subject, however, to the provisions of Section 8 hereof.

5.2 Except as otherwise specifically provided in Section 7 hereof, when and only when the full indebtedness in respect of the Purchase Price of the Equipment, together with interest and all other payments as herein provided, shall have been paid, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of the Equipment shall pass to the Railroad without further transfer or action on the part of the Vendor. However, the Vendor, if so requested by the Railroad at that time, will (a) execute an instrument or instruments releasing or discharging, as the case may be, all liens, security interests and other encumbrances on or in the Equipment created or retained hereby, and deliver such instrument or instruments to the Railroad at its address referred to in Section 19 hereof; (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment; and (c) pay to the Railroad any money paid to the Vendor pursuant to Section 7 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeiture or

damages for failure to execute and deliver such instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

#### **SECTION 6. *Marking of the Equipment.***

6.1 The Railroad will cause each Unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment. The Railroad will not change the number of any Unit of the Equipment except in accordance with a statement of the new number or numbers to be substituted therefor, which statement previously shall have been filed with the Vendor by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

6.2 Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any Unit of the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Railroad may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

#### **SECTION 7. *Casualty Occurrences and other Prepayment.***

7.1 In the event that any Unit of the Equipment shall be or become lost, stolen, destroyed, or, in the opinion of the Railroad, irreparably damaged, or shall be requisitioned or taken over by any governmental authority under the power of eminent domain or otherwise for a period of ninety (90) consecutive days (any such occurrence being hereinafter called a "Casualty Occurrence") prior to the payment of the full Conditional Sale Indebtedness, together with interest thereon and all other payments required hereby, the Railroad shall, promptly after it shall have determined that such Unit has suffered a Casualty Occurrence, cause the Vendor to be fully informed in writing in regard thereto and on the next succeeding date for payment of interest under Section 3 hereof, shall pay to the Vendor a sum equal to the Casualty Value (as hereinafter defined) of such Unit or Units of the Equipment as of the date of such payment. At the time of each payment of Casualty Value hereunder, the Railroad shall file, or cause to be filed, with the Vendor a certificate setting forth the Casualty Value of the Units covered thereby. Any money paid to the Vendor pursuant to this paragraph shall be applied to prepay the Conditional Sale Indebtedness and the Railroad will promptly furnish to the Vendor a revised schedule of payments of principal and interest thereafter to be made, in such number of counterparts as the Vendor may request, calculated as provided in the fourth paragraph of Section 3 hereof, so that the aggregate of the principal and interest payable on each remaining Payment Date shall be substantially equal and the remaining principal payments will completely amortize the Conditional Sale Indebtedness.

7.2 Upon payment by the Railroad to the Vendor of the Casualty Value of any Unit of the Equipment having suffered a Casualty Occurrence, absolute right to the possession of such Unit shall pass to and vest in the Railroad, without further transfer or action on the part of the Vendor, except that the Vendor, if requested by the Railroad, will execute and deliver to the Railroad, at the expense of the Railroad, an appropriate instrument confirming such passage to the Railroad of all the Vendor's right, title and interest in such Unit and the release of Vendor's security interest therein, in recordable form, in order that the Railroad may make clear upon the public records the title of the Railroad to such Unit.

7.3 The "Casualty Value" of each Unit of the Equipment suffering a Casualty Occurrence shall be deemed to be that portion of the original Purchase Price thereof remaining unpaid on the date as of which such Casualty Value shall be determined (without giving effect to any prepayment or prepayments theretofore made under this Section 7 with respect to any other Unit), plus interest accrued thereon but unpaid as of such date. For the purpose of this paragraph, each payment of the Purchase Price in respect of Equipment made pursuant to Section 3 hereof shall be deemed to be a payment on each Unit of the Equipment in like proportion as the original Purchase Price of such Unit bears to the aggregate original Purchase Price of the Equipment.

7.4 In the event the Vendor receives any insurance proceeds under Section 20.1 of the Equipment Lease in respect of a Casualty Occurrence, such proceeds shall be applied in the manner provided in the first paragraph of this Section 7 and shall be deducted from the amount payable hereunder, or, if such proceeds are received after full payment under this Section 7, such proceeds shall be paid to the Railroad.

**SECTION 8. Maintenance; Compliance with Laws and Rules.** The Railroad shall use or cause the use of the Equipment only in the United States, except that the Railroad may from time to time use or cause to be used in Canada Units of the Equipment *provided* that during any calendar year the total use of the Equipment in Canada shall not exceed, on an aggregate basis, more than 2% of the total aggregate use of the Equipment in the United States and Canada. The Railroad shall use the Equipment only in the manner for which it was designed and intended. The Railroad shall, at its own cost and expense, maintain and keep the Equipment and any Modification thereto (as defined in Section 2.2 of the Equipment Lease) in good order, condition and repair, ordinary wear and tear excepted, and in accordance with standards generally prevailing in the railroad industry, including making all replacements required to maintain the Equipment in good running order. The Railroad agrees to comply in all material respects with all applicable governmental laws, regulations, requirements and rules (including the rules of the Department of Transportation) with respect to the use and maintenance of each Unit of the Equipment and not to cause or permit any Unit of Equipment to be operated in violation of such law, regulations, requirements and rules. In case any equipment or appliance on any such Unit of Equipment shall be required to be changed or replaced, or in case any additional or other equipment or appliance is required to be installed on such Unit of the Equipment in order to comply with such laws, regulations, requirements and rules, the Railroad agrees to cause such changes, additions and replacements to be made at no cost to Vendor, *provided, however*, that the Vendor's rights hereunder are subject to the Railroad's rights as Lessee under the Equipment Lease to purchase the Equipment pursuant to Sections 3, 7.1, 8 and 22.1 thereof. Any parts installed or replacements made by the Railroad upon any Unit of the Equipment (except radio equipment or devices having a similar use which have been added to any such Unit of the Equipment by the Railroad, the cost of which is not included in the Purchase Price of such Unit and except Lessee Improvements as defined in Section 2.2 of the Equipment Lease) shall be considered accessions to such Unit of the Equipment and a security interest therein shall be immediately vested in the Vendor as provided in Section 5 hereof, without cost or expense to the Vendor, *provided* that the Railroad shall be entitled to remove any such accession so long as such removal is not inconsistent with the Railroad's obligations set forth in the preceding sentences of this Section 8 and its obligations under Sections 7 and 8 of the Equipment Lease.

**SECTION 9. Reports and Inspection Rights.**

9.1 On or before April 1 in each year, commencing with the year 1976, the Railroad shall furnish to the Vendor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units of the Equipment covered hereby, the amount, description and numbers of all Units of the Equipment that may have suffered a Casualty Occurrence during the preceding calendar year (or, in the case of the first such statement, for the portion thereof commencing with the date of this Agreement), and such other information regarding the condition or repair of the Equipment as the Vendor may reasonably request; and (b) stating that, in the case of all Equip-



ment repainted during the period covered by such statement, the markings required by Section 6 hereof shall have been preserved or replaced. The Vendor shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Railroad's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Vendor the existence and proper maintenance thereof during the continuance of this Agreement. The foregoing right of inspection shall be subject, however, to such terms and conditions of access as may be reasonably imposed by any railroad, terminal company or other entity upon the property on which the Equipment is situate at the time of any such inspection. Vendor agrees to indemnify and hold harmless the Railroad, its affiliates, directors, officers, agents, employees, servants and contractors from and against any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner (whether arising from personal injury, property damage or otherwise) which is in any way, directly or indirectly, attributable to the exercise of such right of inspection.

**SECTION 10. *Use and Possession.*** So long as the Railroad shall not be in default hereunder, the Railroad shall be entitled to the possession and use of the Equipment (by itself or by others on its behalf) in accordance with the terms hereof upon the rail lines over which the Railroad conducts, or has conducted for it, rail passenger service.

**SECTION 11. *Prohibition Against Liens.***

11.1 The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns, including without limitation claims for taxes, assessments or governmental charges or levies, which, if unpaid, might constitute or become a lien, charge or security interest on the Equipment, or any Unit thereof, equal or superior to the Vendor's security interest therein, but shall not be required to pay or discharge any such claim so long as the validity thereof shall be contested in good faith and by appropriate administrative or legal proceedings in any reasonable manner and the nonpayment thereof does not, in the reasonable opinion of the Vendor, adversely affect the property or rights of the Vendor in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Vendor in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement.

11.2 This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

**SECTION 12. *Railroad's Indemnities.*** The Railroad agrees to indemnify, protect and hold harmless the Vendor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees, arising out of retention by the Vendor of a security interest in the Equipment, the use and operation thereof by the Railroad during the period when the security interest therein remains in the Vendor or the transfer of the security interest in the Equipment by the Vendor pursuant to any of the provisions of this Agreement, except, however, any losses, damages, injuries, liabilities, claims and demands whatsoever arising out of any tort, breach of warranty or failure to perform any covenant hereunder by the Builder. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of the indebtedness in respect of the Purchase Price of, and the release of the security interest in the Equipment as provided in Section 5 hereof, or the termination of this Agreement in any manner whatsoever.

**SECTION 13. *Patent Indemnities; Builder's Warranties of Material and Workmanship.*** All agreements in respect of patent indemnities and warranties of design, material and workmanship are set forth in the Specifications and in Schedule B hereto and are hereby incorporated by reference.



#### **SECTION 14. Assignments.**

**14.1** The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement, or, except as provided in Section 10 hereof, transfer the right to possession of any Unit of the Equipment without first obtaining the written consent of the Vendor. A sale, assignment, transfer or disposition to (1) a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all of the property of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Vendor, shall assume and agree to perform each of and all the obligations and covenants of the Railroad under this Agreement, or (2) the Trustee pursuant to the Sale and Lease Back Agreement, shall not be deemed a breach of this covenant; *provided, however*, that the Railroad shall not be released from any of its obligations hereunder and the obligations assumed by the Trustee shall be limited as provided in the Sale and Lease Back Agreement.

**14.2** All of the rights, benefits and advantages of the Vendor under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Vendor and reassigned by any assignee at any time or from time to time. No such assignment shall subject any assignee to, or relieve the Builder from, any of the obligations of the Builder to construct and deliver the Equipment in accordance with this Agreement or to respond to its warranties and agreements contained or referred to in Section 13 hereof, or relieve the Railroad of any of its obligations to the Builder under Sections 1, 2, 3, 4, 12, 13 and 14, hereof or of any other obligation which, according to its terms and context, is intended to survive an assignment.

**14.3** Upon any such assignment, either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all the assignor's right, title and interest in and to the Equipment and this Agreement subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall be made to the assignee in such manner as it may direct.

**14.4** The Railroad recognizes the contemporaneously herewith and pursuant to the terms of an Agreement and Assignment (hereinafter called the "Agreement and Assignment") dated as of the date hereof, between Builder and Federal Financing Bank, Builder will assign all of its rights, benefits and advantages under this Agreement to Federal Financing Bank. The Railroad consents to such assignment and expressly represents to Federal Financing Bank for the purpose of inducing it to enter into the Agreement and Assignment, the rights of Federal Financing Bank to the entire unpaid indebtedness in respect of the Purchase Price, together with interest thereon, as well as any other rights hereunder which may be so assigned, shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever arising out of any breach of any obligation of the Builder with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or with respect to any indemnity herein contained, nor subject to any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. Any and all such obligations, howsoever arising, shall be and remain enforceable by the Railroad against and only against the Builder.

**14.5** The Railroad will (a) in connection with each settlement for the Equipment deliver to Federal Financing Bank, at the time of delivery of notice fixing the Closing Date for such Equipment, all documents reasonably required by the terms of such assignment to be delivered to such assignee in connection with such settlement, in such number of counterparts or copies as may reasonably be requested, except for any opinion of counsel for such assignee, and (b) furnish to Federal Financing Bank such number of counterparts of any other certificate or paper required by the Vendor as may reasonably be requested.

14.6 If the Builder does not receive payment with respect to Units of the Equipment as provided in the Agreement and Assignment, the Builder will promptly notify the Railroad of such event and, if such amount shall not have been previously received, the Railroad will, not later than 90 days after the date such payment was due, pay or cause to be paid to the Builder the aggregate unpaid Purchase Price of such Units, together with interest from the date such payment was due to the date of payment by the Railroad at the highest prime rate of interest of leading New York City banks in effect on the date such payment was due.

#### SECTION 15. Defaults.

15.1 In the event that any one or more of the following events of default shall occur and be continuing, to wit:

a. The Railroad shall fail to pay in full any indebtedness in respect of the Purchase Price of the Equipment or any other sum payable by the Railroad as provided in this Agreement within 10 days after payment thereof shall be due hereunder; or

b. The Railroad shall, for more than 30 days after the Vendor shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment, on its part to be kept or performed or to make provision satisfactory to the Vendor for such compliance; or

c. A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

d. Any other proceeding shall be commenced by or against the Railroad for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad under this Agreement shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

e. The Railroad shall make or permit any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment; or

f. The Government Guaranty (as defined in the Lease) shall, for any reason, cease to be in full force and effect;

then at any time after the occurrence of such an event of default the Vendor may, upon written notice to the Railroad and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Vendor, declare (hereinafter called a "Declaration of Default") the entire

indebtedness in respect of the Purchase Price of the Equipment, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such indebtedness and interest shall bear interest from the date of such Declaration of Default at the Overdue Rate (as defined in Section 3 hereof), to the extent legally enforceable. The Vendor shall thereupon be entitled to recover judgment for the entire unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment so payable, with interest as aforesaid, and to collect such judgment out of the Equipment or any property of the Railroad wherever situated. The Railroad shall promptly notify the Vendor of any event which has come to its attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

15.2 The Vendor may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

#### SECTION 16. Remedies.

16.1 At any time during the continuance of a Declaration of Default, the Vendor may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Vendor, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the Units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Section 16 expressly provided, and may remove the same from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located and may use and employ in connection with such removal all supplies, services and aids and any available trackage and other facilities or means of the Railroad.

16.2 In case the Vendor shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon railroad tracks as to which the Railroad then has a contractual right of access, the Railroad shall, at its own expense, forthwith and in the usual manner, cause the Equipment to be moved to such point or points upon such railroad tracks as shall be designated by the Vendor and shall there make available the Equipment or cause it to be made available to the Vendor. At the option of the Vendor, the Vendor may for a period not exceeding 90 days keep the Equipment on any of the premises of the Railroad or upon railroad tracks as to which the Railroad then has a contractual right of access until the Vendor shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Vendor reasonably convenient to the Railroad. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Vendor shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Vendor and its agent or agents for damages of whatever nature in connection with any retaking of any Unit of the Equipment in any reasonable manner.

16.3 At any time during the continuance of a Declaration of Default, the Vendor (after retaking possession of the Equipment as hereinbefore in this Section 16 provided) may, at its election and upon such notice as hereinafter set forth, retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Vendor shall deem fit. Written notice of the Vendor's election to retain the Equipment shall be given to the Railroad

by telegram or registered mail, addressed as provided in Section 19 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Vendor shall elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Vendor as compensation for the use of the Equipment by the Railroad; *provided, however*, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Vendor the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; *provided, further*, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Vendor within 30 days from the receipt of notice of the Vendor's election to retain the Equipment, then the Vendor may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Vendor shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Section 16.

16.4 At any time during the continuance of a Declaration of Default, the Vendor, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any Unit thereof, free from any and all claims of the Railroad or any other party claiming from, through or under the Railroad at law or in equity, at public or private sale and with or without advertisement as the Vendor may determine; *provided, however*, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Vendor in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Vendor's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Vendor in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Vendor under the provisions of this Agreement.

16.5 Any sale hereunder may be held or conducted at New York, New York at such time or times as the Vendor may specify (unless the Vendor shall specify a different place or places, in which case the sale shall be held at such place or places as the Vendor may specify), in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Vendor may determine. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Section 19 hereof. If such sale shall be a private sale, it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. The Vendor or the Railroad may bid for and become the purchaser of the Equipment, or any Unit thereof, so offered for sale. In the event that the Vendor shall be the purchaser thereof, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Section 16), and in payment of the purchase price therefor the Vendor shall be entitled to have credited on account thereof all sums due to the Vendor from the Railroad hereunder.

16.6 Each and every power and remedy hereby specifically given to the Vendor shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously

and as often and in such order as may be deemed expedient by the Vendor. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Vendor in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Vendor's rights or the Railroad's obligations hereunder. The Vendor's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Vendor's rights hereunder with respect to any subsequent payments or default therein.

16.7 If, after applying all sums of money realized by the Vendor under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Vendor upon demand, and, if the Railroad shall fail to pay such deficiency, the Vendor may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Vendor, there shall remain a surplus in the possession of the Vendor, such surplus shall be paid to the Railroad.

16.8 The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Vendor in enforcing its remedies under the terms of this Agreement. In the event that the Vendor shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Vendor may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

16.9 The foregoing provisions of this Section 16 are subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

**SECTION 17. *Applicable State Laws.*** Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and security agreement and enforced as such.

**SECTION 18. *Recording.*** The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor); and the Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments reasonably requested by the Vendor for the purpose of proper protection, to the satisfaction of counsel for the Vendor, of its security interest in the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement.

**SECTION 19. *Notice.*** Any notice hereunder to any party designated below shall be deemed to be properly served if delivered to it at its address below:

a. To the Railroad, at 955 L'Enfant Plaza North, S.W., Washington, D.C. 20024, attention: Secretary.

b. To the Builder at General Electric Company, Transportation Systems—Business Division, 2901 East Lake Road, Erie, Pennsylvania 16531.

c. To Federal Financing Bank in care of Department of Treasury, Main Treasury Building, Room 3124, Washington, D.C. 20220, attention: Secretary of Federal Financing Bank.

d. To any assignee of Federal Financing Bank or of the Railroad, at such address as may have been furnished in writing to the Railroad or Federal Financing Bank, as the case may be, by such assignee.

Or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

**SECTION 20. Section Headings; Effect and Modification of Agreement.**

20.1 The table of contents and all Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

20.2 This Agreement, including the Schedules hereto (and the Specifications identified in Schedule A hereto), exclusively states the rights of the Vendor and the Railroad with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Vendor and the Railroad.

**SECTION 21. Law Governing.** The Railroad warrants that its chief place of business and its chief executive office are located in the District of Columbia. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; *provided, however,* that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

**SECTION 22. Definitions.** The term "Vendor" whenever used in this Agreement, means, before any assignment of any of its rights hereunder, General Electric Company and any successor or successors for the time being to its manufacturing properties and business; and after such assignment by Builder to Federal Financing Bank pursuant to the Agreement and Assignment, means Federal Financing Bank, its successors and assigns (herein "Federal Financing Bank"); and the term "Builder" whenever used in this Agreement, means, both before and after any such assignment, General Electric Company, and any successor or successors for the time being to its manufacturing properties and business. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto to the extent provided herein.

**SECTION 23. Approvals of Administrator and Trustee.** The parties agree that before any amendment or modification of this Agreement, or any assignment or transfer of the interest of the Railroad hereunder (other than to the Trustee pursuant to the Sale and Lease Back Agreement), becomes effective, the Administrator (as defined in Section 2.1 of the Equipment Lease) and the Trustee must approve the same in writing, which approval shall not be unreasonably withheld. In the event of an assignment or transfer of the Vendor's interest herein, the transferee or assignee of such interest, and any subsequent transferees or assignees, must obtain the approval of the Administrator before any such transfer or assignment becomes effective, *provided, however,* that such approval shall not be required in respect to any transfer or assignment of the Lender's interest herein (i) by Builder pursuant to the Agreement and Assignment; (ii) by the Federal Financing Bank, or (iii) with respect to any such transfer or assignment to insurance companies, commercial and savings banks, pension funds, financial institutions of recognized standing organized under the laws of the United States or any state thereof, or any agency or instrumentality of the United States government.

SECTION 24. *Execution.* This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested.

[CORPORATE SEAL]

Attest:

*J. T. Hyatt*  
Attesting Secretary

[CORPORATE SEAL]

Attest:

*William F. Smith*  
Authorized Officer

GENERAL ELECTRIC COMPANY

By

*C. S. Bressler*  
~~Authorized Officer~~  
Manager Marketing  
Locomotive Products Department

NATIONAL RAILROAD PASSENGER CORPORATION

By

*Don R. Gray*  
Authorized Officer

COMMONWEALTH  
OF PENNSYLVANIA } SS  
COUNTY OF ERIE

On this 1st day of July, 1975, before me personally appeared C. S. Bressler, to me personally known, who, being by me duly sworn, says that he is a Manager Marketing of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

*Margaret M. Frew*  
NOTARY PUBLIC in and for the Commonwealth of  
Pennsylvania.

residing at MARGARET M. FREW, Notary Public  
Erie, Erie Co., Pa.  
My Commission Expires June 7, 1976

My commission expires .....

CITY OF WASHINGTON }  
DISTRICT OF COLUMBIA } ss

On this 24th day of July 1975, before me personally appeared Don R. Brazier,  
to me personally known, who, being by me duly sworn, says that he is a Treasurer  
of NATIONAL RAILROAD PASSENGER CORPORATION, that one of the seals affixed to the foregoing instru-  
ment is the corporate seal of said corporation, that said instrument was signed and sealed on behalf  
of said corporation by authority of its Board of Directors; and he acknowledged that the execution  
of the foregoing instrument was the free act and deed of said corporation.

Dwaine L. Russell  
NOTARY PUBLIC in and for the District of Columbia.

My commission expires 9-30-76



**EXHIBIT 1**

**CERTIFICATE OF ACCEPTANCE**

To **GENERAL ELECTRIC COMPANY**, and **SEATTLE-FIRST NATIONAL BANK**, a national banking association,  
as Trustee under Trust Agreement dated as of May 1, 1975.

I, a duly appointed inspector and authorized representative of **NATIONAL RAILROAD PASSENGER CORPORATION** ("Railroad"), for the purpose of the Conditional Sale Agreement dated as of June 1, 1975, between General Electric Company and the Railroad, and the Equipment Lease dated as of June 1, 1975, between Seattle-First National Bank, a national banking association, Trustee under the Trust Agreement dated as of May 1, 1975, as Lessor, and the Railroad, as Lessee, do hereby certify that I have inspected, received, approved and accepted delivery of, on behalf of the Railroad under the Conditional Sale Agreement and (subject to delivery by the Railroad to said Lessor of a bill of sale therefor) the Equipment Lease, the following units of Equipment:

**MANUFACTURER**

**TYPE OF EQUIPMENT**

**PLACE ACCEPTED**

**DATE ACCEPTED**

**NUMBER OF UNITS**

**NUMBERED**

I do further certify for the foregoing purpose, that the foregoing Equipment is in good order and condition, and appears to conform to the specifications applicable thereto and to all applicable United States Department of Transportation requirements and specifications and that each locomotive included therein has been numbered in accordance with Section 6 of the Conditional Sale Agreement and Section 4.2 of the Equipment Lease.

The execution of this certificate will in no way relieve or decrease the responsibility of the manufacturers of the Equipment for any warranties they have made with respect to the Equipment or for any other obligations which they now or may hereafter have to the Railroad.

**DATED:**....., 1975

.....  
Inspector and Authorized Representative of  
**NATIONAL RAILROAD PASSENGER CORPORATION**

# SCHEDULE A

## DESCRIPTION OF EQUIPMENT

Type	Quantity	Manufacturer's Specifications	Place of Acceptance	R.R. nos.	Unit Price†	Total Price	Deliver
3000 hp. Diesel Electric Locomotive Model P30CH	25	Builder's Specification No. 3685, June 7, 1974 and Proposition 354D-466 dated June 7, 1974. Lessee's request for quotation X-RAD-130-01 dated 5/10/74 and Purchase Order WWJ-4171-048 dated Sept. 27, 1974 and supplements thereto.	Erie, Pennsylvania	700 through 724 (both inclusive)	\$600,468	\$15,011,700	4 Locomotives in June, 1975; 11 Locomotives in July, 1975; 10 Locomotives in August, 1975.

\*The term "unit of Equipment" as used in this Conditional Sales Agreement shall mean a locomotive described above, including the signal equipment installed therein.

†Exclusive of fuel and freight.

## SCHEDULE B

### BUILDER'S WARRANTY

#### Item 1.

(a) *General.* The Builder warrants that the Equipment is of the kind and quality described in, or will be built in accordance with, the Specifications referred to in Section 1 of the Conditional Sale Agreement to which this Schedule B is attached (hereinafter in this Schedule B called the Agreement) and is suitable for the ordinary purposes for which the Equipment is used and warrants each Unit of the Equipment against any defects or any failures caused by faulty or inadequate design, poor workmanship or poor material for a period of two years from date of Railroad's acceptance of each Unit of Equipment, or 350,000 miles, whichever comes first. In addition the car body, wiring and trucks shall be covered by extended warranty for ten years. Any part or parts thereof that prove inadequate, insufficient or defective either in design, material or workmanship during the period of guarantee shall be replaced by the Builder without expense to the Railroad at the shops designated by the Railroad. The above shall apply to any modifications made to any Unit of Equipment whether they are due to defective material or workmanship or to other inadequacies in such Unit.

Where a failure of 25% of a guaranteed item occurs within the guarantee period, the remaining items shall receive repairs or adjustments under the guarantee, including those that have passed beyond the guarantee period before that failure was recognized.

The period of guarantee on a spare part shall commence on the date the part is placed in service by the Railroad and shall terminate upon the earlier of (a) the date which is one year after such spare part is first put in service by the Railroad or, (b) the date when such part has been in service for 100,000 miles.

Equipment reliability must be such to insure 90% daily availability (method of calculation to be by mutual agreement between Railroad and Builder) of the Equipment exclusive of out of service time (commencing when the Unit of Equipment is delivered to the shop or engine house designated by Builder to make the necessary repairs) as a result of derailment, collision or act of God and not exceeding 24 hours in any 30-day period for periodic maintenance as required by law. Railroad will be responsible to insure that repair time is consistent with such shop's established practice and adjustment shall be made for any excess out of service hours resulting from delaying action of Railroad or its representative. Liquidated damages of \$200 per day shall be paid for each day for each Unit of Equipment which fails to meet this requirement during the initial warranty period of two years or 350,000 miles.

(b) *Repairs or Alterations.* The Builder's guarantee shall not apply to any Unit of Equipment which shall have been repaired or altered in a manner which is not in accordance with standards generally accepted in the railroad industry or which does not have the approval of the Builder. However, the Builder's guarantee shall not extend to parts that are not manufactured by the Builder and that are used in the repair or alteration of any Unit. In the case of repairs made by the Builder or by his authorized representative his approval shall be implied.

(c) *Specialties.* The Builder warrants specialties not of its own specification or design to the same extent that the suppliers of such specialties warrant such items to the Builder.

(d) *Miscellaneous.* There are no warranties with respect to material and workmanship, expressed or implied, made by the Builder except the warranties set out above.

The Builder further agrees with the Railroad that neither the inspection as provided in Section 2 of the Agreement, nor any examination, nor the acceptance of any Units of the Equipment as provided in said Section 2 shall be deemed a waiver or a modification by the Railroad of any of its rights under this Item 1.

**Item 2.**

Except to the extent the Builder is obligated under this Agreement to indemnify, protect and hold harmless each assignee of any rights of the Builder under the Agreement, the Railroad agrees to indemnify, protect and hold harmless each such assignee from and against any and all liabilities, claims, demands, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against each such assignee because of the use in or about the construction or operation of the Equipment, or any Unit thereof, of any design, article or material which infringes or is claimed to infringe on any patent or other right.

The Builder shall defend any suit or proceeding brought against the Railroad, any assignee of the Railroad and/or each assignee of the Builder's rights under this Agreement so far as the same is based on a claim that the Equipment of Builder's specification, or any part thereof, furnished under the Agreement constitutes an infringement of any patent, if notified promptly in writing and given authority, information and assistance (at Builder's expense) for the defense of same, and the Builder shall pay all damages and costs awarded therein against the Railroad, any assignee of the Railroad and/or any such assignee of the Builder.

In case any Unit of the Equipment, or any part thereof, is in such suit held to constitute infringement and the use of such Unit or part is enjoined, the Builder shall at its option and at its own expense either procure for the Railroad, any assignee of the Railroad and any such assignee of the Builder the right to continue using such Unit or part, or replace the same with non-infringing equipment subject to the Agreement, or modify it so it becomes non-infringing, or remove such Unit and refund the Purchase Price and the transportation and installation costs thereof. If the Purchase Price is so refunded, such refund shall be made to the assignee of the Builder's rights under the Agreement if the Agreement has been so assigned, which refund shall be applied in like manner as payments in respect of Casualty Occurrences under Section 7 of the Agreement and, to the extent such refund exceeds the Casualty Value, such excess shall be paid to the Railroad.

The Builder will not assume liability for patent infringement by reason of purchase, manufacture, sale or use of devices not included in and covered by its specification.

The foregoing states the entire liability of the Builder for patent infringement by the Equipment or any part thereof.

## SALE AND LEASE BACK AGREEMENT

SALE AND LEASE BACK AGREEMENT dated as of June 1, 1975, between SEATTLE-FIRST NATIONAL BANK, a national banking association, not in its individual capacity but solely as Trustee under a Trust Agreement (hereinafter called the "Trust Agreement") dated as of May 1, 1975 (hereinafter called the "Trustee"), and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act, as amended, and the laws of the District of Columbia (hereinafter called the "Railroad"):

WHEREAS, the Railroad has agreed to purchase the railroad equipment (hereinafter called the "Equipment") described in Schedule A to the Conditional Sale Agreement (hereinafter called the "Conditional Sale Agreement") dated as of June 1, 1975, between General Electric Company and the Railroad; and

WHEREAS, a Participation Agreement dated as of May 1, 1975 (the "Participation Agreement"), has been entered into between the Railroad, the Trustee, Seattle-First National Bank, a national banking association, The Fifth Third Leasing Company, an Ohio corporation, and Union Trust Company of the District of Columbia, a company organized under the laws of the District of Columbia, and Federal Financing Bank, an instrumentality of the United

States of America, regarding participation in the financing of the above purchase, and of the terms and conditions of which the parties to this Sale and Lease Back Agreement have knowledge; and

WHEREAS, the Railroad desires to sell all its right, title and interest in and to the Equipment to, and to lease the Equipment back from, the Trustee, and the Trustee desires to purchase the Equipment from, and lease the Equipment to, the Railroad as aforesaid;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

Section 1. The Railroad hereby agrees to sell, and the Trustee hereby agrees to purchase, subject to the rights of the Federal Financing Bank, the Equipment prior to the same having been placed in service by the Railroad, provided that all the conditions of Section 4 of the Participation Agreement have been satisfied.

Section 2. The Trustee agrees that, upon request of the Railroad following delivery of the Equipment to the Railroad (as evidenced by delivery of the Certificate of Acceptance provided

for in the Conditional Sale Agreement), and conveyance of title (subject to the security interest of the Federal Financing Bank under the Conditional Sale Agreement) thereto by bill of sale, the Trustee will, subject to all the terms and conditions provided for in the Equipment Lease and this Agreement, purchase the Equipment from the Railroad on such date as shall be fixed by the Railroad on at least three days' notice to the Trustee, by making the payments and assuming the obligations provided for in Section 3 hereof and accept title thereto (subject as aforesaid) by a bill of sale in the form attached hereto as Schedule I and lease the Equipment back to the Railroad.

Section 3. As the purchase price for the Equipment being purchased by the Trustee from the Railroad hereunder, the Trustee agrees as follows:

(a) to pay to the Railroad from time to time, upon request of the Railroad following delivery to the Railroad of such Equipment and the payment by the Railroad to the Builder, as defined in the Conditional Sale Agreement, of any payment required by subsection 3.1 of Section 3 of the Conditional Sale Agreement, an amount equal to such payment made by the Railroad under said subsection 3.1 in respect of such Equipment; provided, the Trustee shall have no obligation with respect to Units of Equipment excluded from the

Conditional Sale Agreement for any reason;

(b) to assume and pay the installments of the Conditional Sale Indebtedness (hereinafter called the Conditional Sale Indebtedness), as defined in the Conditional Sale Agreement, including interest thereon and prepayments thereof required or permitted by the last two paragraphs of Section 3 of the Conditional Sale Agreement in respect of such Equipment; and

(c) to assume and discharge all the other obligations of the Railroad under the Conditional Sale Agreement in respect of such Equipment.

The obligations so assumed by the Trustee under paragraph (a) of this Section 3 shall be payable only to the extent of amounts furnished by the Trustors (as defined in the Trust Agreement) to the Trustee pursuant to the Trust Agreement. The obligations so assumed by the Trustee under paragraphs (b) and (c) of this Section 3 shall be payable only out of the Trust Estate (as defined in the Trust Agreement) and such payments shall be made by the Trustee only to the extent that the Trustee or any assignee of the Trustee shall have actually received sufficient moneys or properties in the Trust Estate to make such payments. The Railroad agrees that the Trustee in its capacity as Trustee and the



Trust in respect of which the Trustee is acting as Trustee shall have no personal liability to make any payments under this Agreement whatsoever except, insofar as payments under paragraph (a) of this Section 3 are concerned, as hereinabove provided, and except, insofar as payments under paragraphs (b) and (c) of this Section 3 are concerned, from the Trust Estate to the extent actually received by the Trustee or any assignee of the Trustee as above provided. The obligations of the Railroad under the Conditional Sale Agreement assumed by the Trustee hereunder (other than the obligation to pay the Conditional Sale Indebtedness, and interest accrued thereon) shall be deemed in all respects satisfied by the Railroad's undertakings contained in the Equipment Lease.

Section 4. The Railroad agrees that, notwithstanding the provisions of this Agreement, it shall remain liable to the Federal Financing Bank for the discharge of all the obligations of the Railroad under the Conditional Sale Agreement to the extent such obligations are not discharged by the Trustee under this Agreement. The Railroad agrees that, as an accommodation to the parties, it will remit directly to the Federal Financing Bank that portion of the rent due the Trustee under the Equipment Lease which is equal in amount to the then current installment of Conditional Sale Indebtedness, and will likewise remit directly to the Federal Railroad Administrator that portion of the rent

consisting of the Guaranty Fee for the Government Guaranty as defined in the Equipment Lease. In the event the Railroad exercises any purchase option pursuant to Sections 3, 7, 8 and 22.1 (a) or (b) of the Equipment Lease, the Railroad agrees to assume and pay the then remaining unpaid balance of the Conditional Sale Indebtedness, including interest thereon, if any, and shall hold Trustee harmless from any and all further liability therefor.

Section 5. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of the District of Columbia.

Section 6. Before any amendment or modification of this Agreement, or any assignment or transfer of the interest of the Trustee hereunder (other than to insurance companies, commercial savings banks and financing corporations of recognized standing organized under the laws of the United States or any state thereof) or of the interest of the Railroad hereunder, becomes effective, the Federal Railroad Administrator must approve the same in writing which approval shall not be unreasonably withheld. However, the Trustee or any Trustor under the Trust Agreement may assign to the Federal Financing Bank its rights hereunder and under the Trust Agreement. In consideration of his guaranty of the Railroad's financial obligations under this Agreement, the Federal Railroad Administrator shall

have the right to enforce this provision irrespective of any other provision of this Agreement.

Section 7. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their respective corporate names by their respective officers hereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested.

NATIONAL RAILROAD PASSENGER  
CORPORATION

By *Don H. Craig*  
Authorized Officer


[Corporate Seal]

Attest:

*Walter T. Buel*  
Authorizing Officer

SEATTLE-FIRST NATIONAL BANK,  
a national banking association,  
as Trustee,

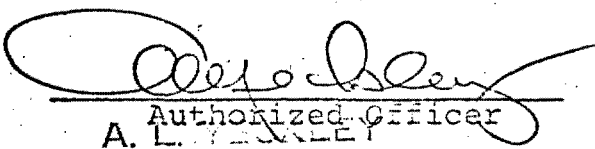
By

  
Authorized Officer

R.M. D. CO.  
ASST. VICE PRESIDENT  
& TRUST OFFICER

[Corporate Seal]

Attest:

  
A. L. PENNEY  
CORPORATE TRUST OFFICER  
SEATTLE-FIRST NATIONAL BANK

CITY OF WASHINGTON, )

DISTRICT OF COLUMBIA, )

ss.:

On this 8th day of July, 1975, before me personally appeared Don R. Broder, to me personally known, who being by me duly sworn, says that he is a Treasurer of NATIONAL RAILROAD PASSENGER CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
NOTARY PUBLIC

[Seal]

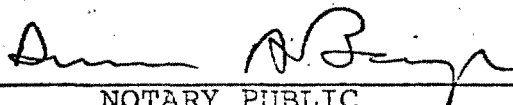
My Commission expires: 9/30/76

STATE OF WASHINGTON )

COUNTY OF K I N G )

SS.:

On this 28<sup>th</sup> day of JUNE, 1975, before me personally appeared R. M. DARR, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of SEATTLE-FIRST NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.



NOTARY PUBLIC

[Seal]

My Commission expires:

9/15/75

SCHEDULE I

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS THAT:

NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act, as amended, and the laws of the District of Columbia (hereinafter referred to as the "Seller") in consideration of One Dollar and other good and valuable considerations, receipt whereof is hereby acknowledged, does hereby grant, bargain, sell, assign and transfer to SEATTLE FIRST NATIONAL BANK, a national banking association, as Trustee under a Trust Agreement dated as of May 1, 1975 (hereinafter referred to as "Buyer") the following property:

Seller's R. R. Nos.

Description

TO HAVE AND TO HOLD said property to Buyer, its successors and assigns, to its and their own use forever.

The interest of Seller in said property, and the interest transferred by this Bill of Sale, is that of absolute ownership.

Seller hereby warrants that it is the lawful owner of said property and that its title to said property is free and clear of all liens, security interests, charges, claims and encumbrances of every kind whatsoever (except the security interest of the Federal Financing Bank as defined in the Conditional Sale Agreement dated as of June 1, 1975, between General Electric Co. and the Seller); that its title to said property is hereby conveyed to Buyer free and clear of all liens, charges, security interests, claims and encumbrances of every kind whatsoever (except the security interest of the Federal Financing Bank as defined in the Conditional Sale Agreement referred to above); and that Seller will warrant and defend such title forever against all claims and demands whatsoever.

IN WITNESS WHEREOF, National Railroad Passenger Corporation has caused this instrument to be executed in its corporate name by its respective officer thereunto duly authorized and its corporate seal to be hereunto duly affixed and attested this \_\_\_\_\_ day of \_\_\_\_\_, 1975.

NATIONAL RAILROAD PASSENGER  
CORPORATION

By \_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

CITY OF WASHINGTON,       )  
                              )  
DISTRICT OF COLUMBIA,    )     ss.:

On this \_\_\_\_\_ day of \_\_\_\_\_, 1975, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is an authorized officer of National Railroad Passenger Corporation, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation; that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC

[Seal]

My Commission expires:

**EQUIPMENT LEASE**

**Dated as of June 1, 1975**

*between*

**Seattle-First National Bank,**

**A National Banking Association,**

**As Trustee**

**LESSOR**

*and*

**National Railroad Passenger Corporation,**

**LESSEE**

---

**Guaranty by Department of Transportation**

---

**25 General Electric Diesel-Electric Locomotives**



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## EQUIPMENT LEASE

THIS EQUIPMENT LEASE dated as of June 1, 1975, between SEATTLE-FIRST NATIONAL BANK, a national banking association, not in its individual capacity but solely as Trustee Under the Trust Agreement (the "Lessor"), and NATIONAL RAILROAD PASSENGER CORPORATION, a corporation organized under the Rail Passenger Service Act, as amended, and the Laws of the District of Columbia (the "Lessee");

### WITNESSETH:

#### SECTION 1. MANUFACTURE AND DELIVERY OF EQUIPMENT.

1.1 *Intent to Purchase, Sell and Lease.* The Lessee is purchasing certain equipment delivered and accepted and settled for under the Conditional Sale Agreement (as hereinafter defined) after June 1, 1975 and on or prior to December 31, 1975 (such equipment, including any Lessee improvement [as defined in Section 2.2 hereof] thereto being herein referred to collectively as the "Equipment" and individually as a "Unit of Equipment") described in Schedule A attached hereto and made a part hereof, pursuant to a Conditional Sale Agreement (the "Conditional Sale Agreement") dated as of June 1, 1975 with GENERAL ELECTRIC COMPANY (the "Builder"). Upon delivery of each Unit of Equipment by the Builder, and the execution and delivery by and on behalf of the Lessee of a Certificate of Acceptance therefor, substantially in the form of Exhibit I to the Conditional Sale Agreement, the Lessee, prior to placing such Unit of Equipment in service, is selling such Unit of Equipment to the Lessor, subject to the provisions of the Conditional Sale Agreement, pursuant to the Sale and Lease Back Agreement (as defined in the Conditional Sale Agreement and herein the "Sale and Lease Back Agreement"). The Lessor agrees to lease and let each such Unit of Equipment to the Lessee and the Lessee agrees to hire each such unit of Equipment from the Lessor for the rental and on and subject to the terms and conditions herein set forth; *provided* that the Acquisition Cost (as defined in Section 2.2 hereof) of all Units of Equipment leased hereunder shall not exceed an aggregate of \$15,250,000.00.

1.2 *Inspection and Acceptance.* Upon delivery of each Unit of Equipment by the Builder, an authorized representative of the Lessee will inspect such Unit of Equipment and if such Unit of Equipment tendered for delivery appears to meet the specifications, such representative will accept delivery thereof and execute and deliver to the Builder and the Lessor duplicate Certificates of Acceptance.

1.3 *Certificate of Acceptance.* The lessee's execution and delivery to the Lessor of a Certificate of Acceptance with respect to each Unit of Equipment shall conclusively establish that, as between the Lessor and the Lessee, but without limiting or otherwise affecting Lessor's or the Lessee's rights, if any, against the Builder or any other third party, such Unit of Equipment is acceptable to and accepted by the Lessee under this Lease, notwithstanding any defect with respect to design, manufacture, condition or in any other respect, and that such Unit of Equipment is in good order and condition and appears to conform to the specifications applicable thereto and all applicable United States Department of Transportation and Interstate Commerce Commission requirements and specifications, if any. The execution of a Certificate of Acceptance with respect to a Unit of Equipment shall constitute a representation by the Lessee that it has no knowledge of any defect in such Unit of Equipment.

#### SECTION 2. RENTS AND PAYMENT DATES.

2.1 *Rent for Equipment.* The Lessee agrees to pay the Lessor the following rent for each Unit of Equipment:

(a) *Interim Rent.* For each Unit of Equipment as Interim Rent the sum of (i) an amount equal to 2/365ths of the Basic Lease Rate (as defined in Section 2.1(b) hereof) of the Acquisition Cost (as defined in Section 2.2 hereof) of each Unit of Equipment subject to this Lease for each day elapsed from and including the Closing Date (as defined in the Conditional Sale Agreement and herein the "Closing Date") for such Unit of Equipment to the Term Lease Commencement Date (as defined in Section 2.2 hereof), plus (ii) an amount equal to the guaranty fee payable by the Lessor, as Trustee, to the Deputy Federal Railroad Administrator of the Department of Transportation of the United States of America (the "Administrator") under the Guaranty Agreement (the "Guaranty Agreement"), dated July 16, 1975, among the Administrator on behalf of the Secretary of the Department of Transportation, the Lessor, and Federal Financing Bank, as Assignee of the Builder under the Conditional Sale Agreement (the "Guaranty Fee") in respect of such rental period.

(b) *Periodic Rent.* For each Unit of Equipment thirty (30) semiannual installments of Periodic Rent payable in an amount equal to the sum of (i) 4.8124% of the Acquisition Cost (herein called the Basic Lease Rate) of such Unit of Equipment plus (ii) an amount equal to the Guaranty Fee payable in respect of each rental period plus (iii) the aggregate of the Modification Rate of each Modification Cost of such Unit of Equipment (as defined in Section 2.2 hereof).

(c) *Additional Rent.* Additional rent payable by Lessee to Lessor under this Lease shall include, without limitation, amounts, if any, payable pursuant to Sections 10.2, 11, 15.1, 16 and 21 hereof.

**2.2 Rent Payment Dates; Acquisition Cost; Modifications.** The Term Lease Commencement Date (herein "Term Lease Commencement Date") for all Units of Equipment shall be December 31, 1975. Interim Rent shall be due and payable on the Term Lease Commencement Date with respect to Interim Rent accrued to such date. The installments of Periodic Rent for each Unit of Equipment shall be due and payable semiannually following the Term Lease Commencement Date on July 2 and December 31 of each year, commencing July 2, 1976 (herein a "rent payment date"). The term "Acquisition Cost" as used herein shall mean, with respect to each Unit of Equipment, the cost to the Lessor of the acquisition of such Unit of Equipment (including the unpaid amount of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement and herein the "Conditional Sale Indebtedness") with respect to such Unit assumed by the Lessor, and including the cost to Lessor of any Modification to such unit made prior to Term Lease Commencement Date, but not including any closing costs). The term "Modification Cost" as used herein shall mean with respect to each Unit of Equipment, the cost to the Lessor of each Modification to such Unit of Equipment made from time to time, on or after the Term Lease Commencement Date pursuant to Sections 7 and 8 hereof. The term "Modification Rate" as used herein shall mean that percentage of each Modification Cost which will amortize such Modification over the then remaining term of this Lease and will provide Lessor with a pre-tax equivalent yield, calculated on after-tax basis, equal to 5% above the rate for newly issued United States Treasury obligations of maturities most closely corresponding to the termination date of the Lease. The term "Lessee Improvement" shall mean each improvement or addition after the Term Lease Commencement Date not included in normal repairs, maintenance and replacements, to any Unit of Equipment, which is or will be readily removable without causing material damage to such unit of Equipment or which would qualify as a deductible repair within the annual percentage repair allowance under the appropriate Asset Guideline Class of the Equipment (which Class shall include for purposes of this sentence, only the Equipment and Modifications thereto) as provided in Reg. 1.167(a)-11 as from time to time amended. The term "Modification" shall mean any addition or improvement to a Unit of Equipment not included in normal repairs, maintenance and replacements, which is not a Lessee Improvement (as defined in this Section 2.2).

**2.3 Place and Manner of Rent Payment.** The Lessor irrevocably instructs the Lessee to make, and the Lessee agrees to make, all the payments provided for in this Lease in immediately available funds (including but not limited to the payments required under Section 11 hereof) for the account of the Lessor, care of the Trustee, Seattle-First National Bank, P.O. Box 24186, Seattle, Washington

98124, Attention: Corporate Trust Dept., or at such other place or places as the Trustee shall specify in writing in the Sale and Lease Back Agreement or otherwise) on or before 10:00 A.M., Seattle time, on the date upon which payments are due and payable. With respect to payments made in other than Federal funds, the Lessee will instruct the bank transferring said funds on the Lessee's behalf to wire advice of said transfer to Seattle-First National Bank, Attention: Corporate Trust Dept., not later than 10:00 A.M. Seattle time on the rental payment date. With respect to payments made in Federal funds, the Lessee will instruct the Bank transferring said funds on the Lessee's behalf to make said transfer to Seattle-First National Bank, Attention: Corporate Trust Dept.

**2.4 Net Lease.** This Lease is a net lease and the Lessee shall not be entitled to any abatement of rent or reduction thereof, including, but not limited to, abatements or reductions due to any present or future claims of the Lessee against the Lessor under this Lease or otherwise or against the Builder of the Equipment, nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or the Lessee be otherwise affected, by reason of any defect in or failure of title of the Lessor to the Equipment (except for any defect or failure of title resulting solely from acts or omissions of the Lessor or any Trustor) or any defect in or damage to or loss or destruction of all or any of the Equipment from whatsoever cause, the taking or requisitioning of Equipment by condemnation or otherwise, the lawful prohibition of the Lessee's use of the Equipment, the interference with such use by any private person or corporation, the invalidity or unenforceability or lack of due authorization or other infirmity of this Lease, or lack of right, power or authority of the Lessor to enter into this Lease, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events unless the obligation to pay the same shall be terminated pursuant to Section 11 hereof, or until, pursuant to Section 13 hereof, the Equipment is made available to Lessor, or until, pursuant to Section 22.1 hereof, the Lessee shall purchase the Equipment; *provided however*, that neither this Section 2.4 nor any other provision of this Lease shall preclude any separate, independent claim (not by way of any abatement or reduction of any amount at any time payable by the Lessee hereunder) by the Lessee for the breach of any representation, covenant, undertaking or agreement made herein by the Lessor for itself or for the Trustors (as defined in Section 24.11 hereof).

### SECTION 3. TERM OF THE LEASE.

The term of this Lease as to each Unit of Equipment shall begin on the Closing Date for such Unit of Equipment, and subject to the provisions of this Section 3 and Sections 7, 8, 11, 16 and 22 hereof shall terminate, in the case of each Unit of Equipment, fifteen (15) years following the Term Lease Commencement Date, *provided, however*, that any time prior to the Term Lease Commencement Date, Lessee may exercise its purchase option pursuant to Section 22.1 hereof (subject to the terms thereof) at an option price as determined in paragraph (a) of said Section 22.1.

### SECTION 4. OWNERSHIP AND MARKING OF THE EQUIPMENT.

**4.1 Retention of Title.** The Lessor, as between the Lessor and the Lessee, shall and hereby does retain full legal title to the Equipment notwithstanding the delivery thereof to and the possession and use thereof by the Lessee.

**4.2 Duty to Number Equipment.** The Lessee will cause each Unit of Equipment to be kept numbered with its road number as set forth in Schedule A. The Lessee will not change the road number of any Unit of Equipment except with the consent of the Lessor and in accordance with a statement of new road numbers to be substituted therefor, which consent and statement previously shall have been filed with the Lessor by the Lessee and filed, recorded or deposited by the Lessee in all public offices where this Lease shall have been filed, recorded or deposited.

**4.3 Prohibition Against Certain Designations.** Except as above provided, the Lessee will not allow the name of any person, association or corporation to be placed on the Equipment as a designation that might be interpreted as a claim of ownership; *provided, however*, that the Lessee may cause the Equipment to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on transportation equipment used by it of the same or a similar type for convenience of identification of the right of the Lessee to use the Equipment under this Lease.

**4.4 Indemnification for Improper Marking.** The Lessee shall indemnify the Lessor and the Trustors against any liability, loss or expense incurred by any of them as a result of any act or omission of the Lessee which is inconsistent with Sections 4.2 or 4.3 hereof.

## **SECTION 5. DISCLAIMER OF WARRANTIES.**

NEITHER THE LESSOR NOR ANY TRUSTOR SHALL BE DEEMED TO HAVE MADE OR GIVEN, AND EACH HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO (A) THE MERCHANTABILITY, FITNESS FOR USE, OPERATION, CONDITION OR DESIGN OF ANY UNIT OF EQUIPMENT, (B) THE QUALITY OF THE MATERIAL, EQUIPMENT OR WORKMANSHIP THEREIN, (C) THE LESSOR'S TITLE THERETO, (D) INTERFERENCE BY ANY PARTY OTHER THAN THE LESSOR WITH THE LESSEE'S RIGHT TO THE QUIET ENJOYMENT THEREOF, OR (E) ANY OTHER MATTER WHATSOEVER (other than Lessor's Warranty as hereafter in this Section 5 defined), UPON THE ACCEPTANCE BY THE LESSEE OF ANY SUCH UNIT OR THE TRANSFER THEREOF TO THE LESSEE PURSUANT TO ANY PROVISION HEREOF, OR OTHERWISE, IT BEING AGREED THAT ALL SUCH RISKS, AS BETWEEN THE LESSOR AND THE LESSEE, ARE TO BE BORNE BY THE LESSEE. The Lessor hereby appoints and constitutes the Lessee its agent and attorney-in-fact during the term of this Lease to assert and enforce, from time to time, in the name and for the account of the Lessor and the Lessee, as their interests may appear, but in all cases at the sole cost and expense of the Lessee, whatever claims and rights the Lessor may have as owner of the Equipment against the Builder in respect thereof. "Lessor's Warranty" shall mean as to any Unit of Equipment including Modifications thereto a warranty by the Lessor that: (i) the Lessor has received whatever title (subject to the security interest of the Vendor) to such Unit of Equipment including Modifications thereto as was conveyed to the Lessor by the Lessor's predecessor in title to such Unit of Equipment including Modifications thereto; and (ii) such Unit of Equipment including Modifications thereto will be free of all liens, charges, encumbrances, claims or security interest which either (A) result from action taken or omissions to act by the Lessor which are not expressly permitted by this Lease or which are not expressly requested or consented to by the Lessee in writing or (B) result from action taken or omissions to act by the Lessor other than with respect to the Equipment and Modifications thereto, or in connection with this Lease.

## **SECTION 6. LESSEE'S INDEMNITY.**

**6.1 Scope of Indemnities.** Except with respect to the Lessor's or the Trustor's exercise of its right to inspect under Sections 12.3, 13 and 17 hereof, and except as provided in Section 15.2 of the Participation Agreement (hereinafter defined), the Lessee agrees to indemnify, protect and hold harmless the Lessor and the Trustors from and against all losses, damages, injuries, liabilities, claims and demands and expenses in connection therewith, including, but not limited to, counsel fees and expenses, patent liabilities, penalties and interest, arising out of or as the result of the entering into or the performance of, or the occurrence of a default or an event of default under Section 16 of, this Lease, the ownership of any Unit of Equipment, the ordering, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any Unit of Equipment or any accident in connection with the operation, use, condition, possession, storage or return of any Unit of Equipment resulting in damage to property or injury or death to any person; *provided, however*, the Lessee shall not in-

demnify, protect or hold harmless the Lessor or the Trustor from or against any losses, damages, injuries, liabilities, claims or demands (including any expenses in connection therewith) which either (i) result from actions taken by the Lessor or the Trustor which are not expressly permitted by this Lease or (ii) result from action taken or omissions to act by the Lessor or the Trustor other than with respect to the Equipment or in connection with this Lease.

**6.2 Continuation of Indemnities and Assumptions.** The indemnities contained in this Section 6 shall survive the expiration of the term or termination of this Lease with respect to all events, facts, conditions or other circumstances occurring or existing prior to such expiration or termination. The Lessee shall be entitled to control, and shall assume full responsibility for, the defense of any action, suit or proceeding brought in connection with any matter indemnified against pursuant to Section 6.1 hereof, will cause such action, suit or proceeding to be defended by counsel selected by the Lessee, which counsel shall be reasonably acceptable to the Lessor, and the Lessor and the Trustor agree to cooperate with the Lessee in any such defense. In the event of the Lessee's refusal to assume such defense, the Lessee shall pay all costs and expenses incurred by the Lessor or the Trustor in connection with such defense, including counsel fees.

## **SECTION 7. RULES, LAWS AND REGULATIONS.**

**7.1** The Lessee agrees, for the benefit of the Lessor, the Trustor and Federal Financing Bank, to comply in all material respects with all applicable laws, rules, requirements or regulations of any legislative, executive, administrative or judicial body exercising any power, authority or jurisdiction over the equipment or the Lessee including, without limitation, all laws of the jurisdictions in which the Lessee's service or operations now or hereafter may extend, and the rules and regulations of the United States Department of Transportation and the Interstate Commerce Commission, to the extent such requirements or regulations affect the title, maintenance or possession of any Unit of Equipment, and not to cause nor permit any Unit of Equipment to be operated in violation of such requirements or regulations. In the event any change, alteration, replacement, or addition including, without limitation, a Modification of or to any part of any Unit of Equipment shall be required or ordered by any of the foregoing to be made prior to the expiration of this Lease or any renewal thereof, the Lessee shall fully comply therewith; *provided, however*, that anytime after December 31, 1984, anything in this Section 7 to the contrary notwithstanding, Lessee may, in lieu of making any required Modification under this Section 7.1, exercise its purchase option pursuant to Section 22.1 hereof (subject to the terms thereof) at an option price determined pursuant to paragraph (b) thereof.

**7.2** Each Modification (as defined in Section 2.2 hereof) shall be made initially at Lessor's own cost and expense and leased by Lessee over the remaining term of this Lease as provided in Section 2.1(b) hereof. *Provided, however*, that anything in Section 7.1 or 8 hereof to the contrary notwithstanding, the Lessee shall not make any Modification to a Unit of Equipment unless all obligations of Lessee hereunder attributable thereto shall have been guaranteed by the Administrator pursuant to the Guaranty Agreement or by a surety bond or other security reasonably satisfactory to Lessor in form and substance. Any replacement, repairs, or maintenance and any Lessee Improvement to any Unit of Equipment shall be made at Lessee's own cost and expense.

## **SECTION 8. USE AND MAINTENANCE OF THE EQUIPMENT.**

The Lessee shall use or cause the use of the Equipment only in the United States, except that the Lessee may from time to time use or cause to be used in Canada Units of Equipment, *provided* that during any calendar year the total use of the Equipment in Canada shall not exceed, on an aggregate basis, more than 2% of the total aggregate use of the Equipment in the United States and Canada and, upon the request of the Lessor, the Lessee shall, for any calendar year specified in such request, furnish to the Lessor, within 60 days after such request, a certificate setting forth the aggregate use of the Equipment in Canada compared with the total aggregate use of the Equipment in the United States and Canada. The Lessee shall use the Equipment only in the manner for which



it was designed and intended. The Lessee shall, at its own cost and expense, maintain and keep the Equipment and any Modifications thereto in good order, condition and repair, ordinary wear and tear excepted, and in accordance with standards generally prevailing in the railroad industry, including making all replacements required to maintain the Equipment and any Modifications thereto in good running order. No Modification not required pursuant to Section 7 hereof shall be made by Lessee to any Unit of Equipment without the prior written consent of Lessor; *provided, however*, that if Lessor shall refuse to consent to a Modification, Lessee may exercise its purchase option pursuant to Section 22.1 hereof (subject to the terms thereof) at an option price determined pursuant to paragraph (b) thereof. The cost and expenses of any replacement, Modification or Lessee Improvement shall be borne as provided in Section 7.2 hereof. Any such replacement or Modification made by the Lessee upon any Unit of Equipment (except radio equipment or devices having similar use which have been added to any such Unit of Equipment by Lessee, the cost of which is not included in the Acquisition Cost of such Unit) shall be considered accessions to such Unit of Equipment and title thereto shall be immediately vested in the Lessor; *provided* that the Lessee shall be entitled to remove any such accession so long as such removal is not inconsistent with the Lessee's obligations under this Section 8 or under Section 7 hereof.

#### SECTION 9. LIENS ON THE EQUIPMENT.

The Lessee shall pay or satisfy and discharge any and all claims (other than the security interest of the Vendor or claims resulting from an act of the Lessor or any Trustor) which, if unpaid, might constitute or become a lien, security interest or a charge upon the Equipment or any Unit thereof, and any liens, security interest or charges which may be levied against or imposed upon any Unit of Equipment as a result of the failure of the Lessee to perform or observe any of its covenants or agreements under this Lease, but the Lessee shall not be required to pay or discharge any such claims so long as it shall, in good faith and by appropriate administrative or legal proceedings, contest the validity thereof in any reasonable manner which will not affect or endanger the title and interest of the Lessor to the Equipment. The Lessee's obligations under this Section 9 shall survive termination of this Lease.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due or delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

#### SECTION 10. FILING, PAYMENT OF FEES AND TAXES.

**10.1 Filing.** In addition to satisfying the condition precedent in Section 4.3 of the Participation Agreement (as defined in Section 14 hereof), the Lessee will, from time to time, do and perform any act and will execute, acknowledge, deliver, file, register and record (and will re-file, re-register, or re-record whenever required) any and all instruments reasonably requested by the Lessor, for the purpose of protecting the Lessor's title to, or the security interest granted to any assignee under Section 18 hereof in, the Equipment to the reasonable satisfaction of the Lessor's or such assignee's counsel or for the purpose of carrying out the intention of this Lease. The Lessee will promptly furnish to the Lessor and any assignee thereof hereunder evidence of all such filings, registering, recording, depositing, refiling, re-registering, re-recording and/or redepositing and an opinion or opinions of counsel for the Lessee with respect thereto reasonably satisfactory to the Lessor and any assignee thereof hereunder. The Lessee will pay all costs, charges and expenses incident to any such filing, refiling, registering, re-registering, recording and re-recording of any such instruments or incident to the taking of such action.

**10.2 Payment of Taxes.** In addition to all payments to be made by the Lessee hereunder, the Lessee shall, subject to the exclusion hereinafter set forth, bear the full expense of and, unless pre-

cluded by law, remit directly to the proper governmental authority all taxes, fees, assessments, duties, imposts, withholdings, or other charges (hereinafter collectively referred to as "Imposts") levied or imposed on the Lessor, the Lessee, any Trustor, or any Unit of Equipment by the United States, any state or foreign government, and any agency, instrumentality, political subdivision or unit of the United States, any state or foreign government, which Imposts are upon or with respect to, arising from or in connection with or measured by this Lease, the Conditional Sale Agreement, Agreement and Assignment, the Assignment of Lease and Agreement, the Participation Agreement or the Sale and Lease Back Agreement, including any document contemplated thereby (all such agreements and documents being herein referred to collectively as the "Documents"), or any purchase, sale, rental, use, ownership, possession, operation, payment, shipment, delivery, re-delivery or transfer of title of any property or Unit of Equipment under the terms hereof or of the Documents, or upon the rentals or receipts arising therefrom.

The Lessee's obligation to bear and remit Imposts under this Section 10.2 shall not include:

(i) United States federal income tax payable by any Trustor or the Lessor.

(ii) State, city, or local income taxes or franchise taxes on, or measured by, net income of Lessor or any Trustor.

In the event Lessor is required to and does make any payment under this Section 10.2, Lessee shall pay the person indemnified an amount which, after taking into account all taxes required to be paid by such person in respect of the receipt thereof under the laws of the United States or a foreign, state or local government taxing authority (after giving credit for any savings in respect of any such taxes by reason of deductions, credits or allowances in respect of the payment of the expenses indemnified against, and of any other such taxes), shall be equal to the amount of such payment. The sum payable pursuant to this Section 10.2 shall be payable thirty (30) days after the person to be indemnified delivers to Lessee the verification reasonably satisfactory to Lessee that indemnity is due pursuant to this paragraph for such person, including without limitation, a statement describing in reasonable detail the circumstances requiring indemnification hereunder, and setting forth in reasonable detail the computation of the amount thereof.

The Lessee agrees to assist the Lessor and the Trustors in the preparation, and where possible to file, on behalf of the Lessor and the Trustors, all required tax returns and reports relating to taxes for which the Lessee is responsible under this Section 10.2. The Lessor shall keep the Lessee informed of any claim made against the Lessor or any Trustor for the payment of any such tax, levy, impost, duty, charge or withholding.

The Lessee shall promptly remit all Imposts to the appropriate governmental authority within the time provided by law and will at all times keep all and every part of any Unit of Equipment free and clear of any Impost which might in any way affect the title of the Lessor or the interest of the Trustors or result in a lien upon any such Unit of Equipment; *provided, however*, that the Lessee shall be under no obligation to remit any Impost of any kind so long as it is contesting, in good faith and by appropriate legal proceedings, such Impost and the nonpayment thereof is authorized by law and does not, in the reasonable opinion of the Lessor and the Trustors, adversely affect the title, property or rights of the Lessor, the Trustors, or Federal Financing Bank hereunder. The Lessee agrees to give the Lessor and the Trustors notice of such contest within 30 days after institution thereof and the Lessor and the Trustors agree to provide information requested in writing by the Lessee as may be reasonably required by the Lessee in furtherance of said contest. If any impost shall be charged or levied against the Lessor directly (payment of which under this Section 10.2 is to be made by the Lessee) and is remitted by the Lessor, the Lessee shall reimburse the Lessor upon submission to the Lessee of reasonably satisfactory evidence thereof.

The Lessee shall be liable for all fines, penalties, interest, and other charges imposed in connection with the reporting and remittance obligations imposed on the Lessee by this Section 10.2.

In the event that during the continuance of this Lease, the Lessee becomes liable for any remittance or reimbursement pursuant to this Section 10.2, such liability shall continue, notwithstanding the expiration of this Lease, until such Impost is remitted or the Lessor is reimbursed therefor.

To the extent that the Lessee may be prohibited by law from performing in its own name the duties required by this Section 10.2, the Lessor hereby authorizes the Lessee to act in the Lessor's name and on its behalf; *provided, however*, that the Lessee shall indemnify and hold the Lessor harmless from and against any and all claims, costs, expenses, damages, losses and liabilities incurred in connection therewith as a result of, or incident to, any action by the Lessee pursuant to this authorization.

The Lessee shall, whenever requested by the Lessor or the Trustor, submit to the Lessor copies of returns, statements, reports, billings and remittances, or furnish other evidence satisfactory to the Lessor and the Trustor of the Lessee's performance of its duties under this Section 10.2. The Lessee shall also furnish promptly upon request such data as the Lessor or the Trustor reasonably may require to permit the Lessor's compliance with the requirements of taxing authorities.

#### SECTION 11. PAYMENT FOR CASUALTY OCCURRENCE.

**11.1 Duty of Lessee to Notify Lessor.** In the event that during the term of this Lease or any renewal thereof or prior to the return of any Unit of Equipment pursuant to Section 13 or Section 17 hereof, any Unit of Equipment, including any Modification thereto, in the good faith opinion of the Lessee, shall be or become lost, stolen, destroyed, worn out, irreparably damaged or rendered permanently unfit for use or shall be requisitioned for use or taken over by any governmental authority under the power of eminent domain or otherwise, resulting in the loss of possession or use by the Lessee for a period of 90 consecutive days (any such occurrence being hereinafter called a "Casualty Occurrence"), the Lessee shall promptly notify the Lessor in writing in regard thereto and specify the date said Unit of Equipment was first placed in service and the date of the Casualty Occurrence. The Lessee's obligations under this Section 11 shall survive termination of this Lease.

**11.2 Sum Payable for Casualty Loss.** The Lessee, on the rent payment date next succeeding the notification provided in Section 11.1, shall pay to the Lessor a sum equal to the Casualty Value (as defined in Section 11.5 hereof) of such Unit or Units of Equipment as to which notification is given as of the date of such payment together with the rental with respect to such Unit or Units of Equipment otherwise due on such date.

**11.3 Rent Termination.** Upon (but not until) payment of the Casualty Value in respect of any Unit or Units of Equipment on the date provided in Section 11.2 hereof, together with the rental with respect to such Unit or Units of Equipment otherwise due on such date, the obligation to pay rent for such Unit or Units of Equipment and any Modifications thereto shall terminate, but nothing in this Section 11.3 shall impair or modify the Lessee's obligation to continue to pay rent under Section 2.1 hereof for all other Units of Equipment and Modifications thereto.

**11.4 Disposition of Equipment.** The Lessee shall (unless it shall exercise the option provided in this Section 11.4), as agent for the Lessor, dispose of such Unit or Units of Equipment and Modifications thereto which have suffered a Casualty Occurrence as soon as it is able to do so for the best price obtainable. Any such disposition shall be on an "as-is," "where-is" basis without representation or warranty; express or implied. As to each separate Unit of Equipment so disposed of the Lessee may retain all amounts of such price and damages received by the Lessee by reason of such Casualty Occurrence up to the Casualty Value attributable thereto and shall remit the excess, if any (minus, to the extent it shall not exceed such excess, the fair market value of Lessee Improvements to such Unit or Units of Equipment), to the Lessor. The Lessee may, at its option, retain any such Unit of Equipment and Modifications thereto if the fair market value thereof (minus the amount to be deducted under the immediately preceding sentence), shall not exceed the Casualty Value attributable thereto, or, if such fair market value (minus such amount to be deducted under the immediately preceding

sentence) shall exceed the Casualty Value attributable thereto and the Lessee shall pay to the Lessor the amount of such excess. If the Lessee shall elect to retain any such Unit of Equipment as aforesaid, the Lessor shall deliver to the Lessee a bill of sale therefor as provided in Section 22.1 hereof.

**11.5 Casualty Value.** The Casualty Value of each Unit of Equipment shall be an amount determined as of the date the Casualty Value is paid to the Lessor under Section 11.2 hereof (and not the date of the Casualty Occurrence) equal to (a) that percentage of the Acquisition Cost of such Unit of Equipment as set forth in the Casualty Value Schedule attached hereto as Schedule B and (b) the Modification Casualty Value, if any, which shall mean for each Modification the value shown in a schedule (a "Modification Casualty Value Schedule"), that shall be agreed to before the Modification is made. Each such schedule shall reflect the assumptions and concepts which were originally used in deriving the percentage in the Casualty Value Schedule.

**11.6 Requisition for Use.** In the event that during the term of this Lease or any renewal thereof or prior to the return of any Unit of Equipment pursuant to Section 13 or Section 17 hereof, the use of any Unit of Equipment is requisitioned or taken by any governmental authority for a period not exceeding 90 consecutive days, then the Lessee's obligations under the Lease with respect to such Unit of Equipment shall continue to the same extent as if such requisition or taking had not occurred. Provided no event of default under Section 16 hereof shall have occurred and be continuing, the Lessee shall be entitled to receive and retain for its own account all sums payable for any such period by such governmental authority as compensation for requisition or taking of possession up to an amount equal to the rent paid or payable hereunder for such period, and the balance, if any (to the extent such amount constitutes compensation for use of the Equipment, but not otherwise), shall be payable to and retained by the Lessor as its sole property.

## **SECTION 12. REPORTS AND INSPECTION RIGHTS.**

**12.1 Annual Report and Quarterly Statements.** The Lessee shall furnish to the Lessor, promptly upon their becoming available, a copy of its annual report to the Congress of the United States, including the financial statements contained therein and, when requested by Lessor, its quarterly statements to the Interstate Commerce Commission on Forms RE and I (income statement) and CBS (balance sheet).

**12.2 Equipment Reports.** On or before April 1 in each year, commencing with the year 1976, the Lessee shall furnish to the Lessor an accurate statement, as of the preceding December 31, (a) showing the amount, description and numbers of the Units of Equipment then leased hereunder, the amount, description and numbers of the Units of Equipment that may have suffered a Casualty Occurrence during the preceding calendar year (or, in the case of the first such statement, for the portion thereof commencing with the date of this Lease), and such other information regarding the condition or repair of the Equipment as the Lessor may reasonably request, (b) describing each and every Lessee Improvement to the Equipment in excess of \$10,000, made during the preceding calendar year (or, in the case of the first such statement, for the portion thereof commencing with the date of this Lease), and (c) stating that, in the case of all Equipment repainted during the period covered by such statement, the numbers required by Section 4.2 hereof shall have been preserved or replaced.

**12.3 Lessor's Inspection Rights.** The Lessor shall have the right, at its sole cost and expense, by its authorized representative, to inspect the Equipment and the Lessee's records with respect thereto, at such times as shall be reasonably necessary to confirm to the Lessor the existence and proper maintenance thereof during the continuance of this Lease. The foregoing right of inspection shall be subject, however, to such terms and conditions of access as may be reasonably imposed by any railroad, terminal company or other entity upon the property on which the Equipment is situate at the time of any such inspection. Lessor and each Trustor hereby jointly and severally agree to indemnify and hold harmless the Lessee, its affiliates, directors, officers, agents, employees, servants and contractors

from and against any claim, cause of action, damages, liability, cost or expense (including counsel fees and costs in connection therewith) which may be incurred in any manner (whether arising from personal injury, property damage or otherwise), *provided, however*, that nothing in this Section 12.3 shall be construed as imposing any obligation on Lessor to conduct inspections or to discover any defect in the Equipment nor as imposing on Lessor any duty other than the duty to indemnify as expressly provided hereinabove.

#### SECTION 13. RETURN OF EQUIPMENT UPON EXPIRATION OF TERM.

Upon the expiration of the term of this Lease with respect to any Unit of Equipment, the Lessee will, at its own cost and expense deliver such Unit of Equipment to the Lessor upon such tracks as the Lessor shall reasonably designate (and as to which the Lessee then has a contractual right of access), and the Lessee will arrange for the storage of such Unit of Equipment on such tracks for a period not exceeding 90 days, all as directed by the Lessor upon not less than 30 days' notice to the Lessee. All movement and storage of each such Unit is to be at the risk and expense of the Lessee. During any such storage period the Lessee will permit the Lessor or any person designated by it, including the authorized representative or representatives of any prospective purchaser of any such Unit to inspect the same, but only on the terms and conditions set forth in Section 12.3 hereof, which Section the Lessor shall cause to be applicable to any such prospective purchaser and any such authorized representative. The making available, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so make available, store and transport the Equipment. During the storage period the Lessee shall maintain insurance on such Unit of Equipment in accordance with Section 20 hereof.

#### SECTION 14. LESSEE'S REPRESENTATIONS AND WARRANTIES.

The Lessee represents and warrants that:

(a) The Lessee is a corporation duly organized under the Rail Passenger Service Act, as amended, and the laws of the District of Columbia, is in good standing under the laws of the District of Columbia and believes with good reason that it is not required to qualify to do business as a foreign corporation in any State.

(b) The Lessee has the corporate power, authority and legal right to execute and deliver this Lease, to lease the Equipment hereunder, and to execute and deliver the Conditional Sale Agreement (including the Certificates of Acceptance provided for thereunder), the Sale and Lease Back Agreement dated as of June 1, 1975, between the Lessor and the Lessee (herein "Sale and Lease Back Agreement") and the Participation Agreement dated as of June 1, 1975, among Lessor, Lessee, the Trustors, the Administrator and Federal Financing Bank (herein the "Participation Agreement") and to perform its obligations hereunder and thereunder.

(c) The execution and delivery of this Lease, the Conditional Sale Agreement (including such Certificates of Acceptance), the Sale and Lease Back Agreement and the Participation Agreement by the Lessee, and the performance by the Lessee of its obligations hereunder and thereunder, are not in violation of the articles of incorporation or bylaws of the Lessee or, to the knowledge of Lessee, of any indenture, mortgage, contract or other agreement to which the Lessee is a party or by which it is bound or of any law, governmental rule, regulation, order, judgment, license or other instrument applicable to the Lessee.

(d) The execution, delivery and performance of this Lease, the Conditional Sale Agreement (including such Certificates of Acceptance), the Sale and Lease Back Agreement and the Participation Agreement by the Lessee and the consummation by the Lessee of the transactions contemplated hereby and thereby do not require the consent, approval or authorization of, or notice to, any Federal, District of Columbia or Canadian authority, or, to the Lessee's belief, any other governmental authority.

(e) This Lease, the Conditional Sale Agreement, the Sale and Lease Back Agreement and the Participation Agreement are, and the Certificates of Acceptance will be when entered into, legal, valid and binding obligations of the Lessee enforceable against the Lessee in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization and similar laws affecting the rights and remedies of lessors, creditors and secured parties.

(f) Each Unit of Equipment will constitute "new section 38 property" within the meaning of Section 48(b) of the Code at the time of delivery of the Equipment to the Lessor under the Sale and Lease Back Agreement, the Equipment will not have been placed in service by the Lessee and no person will have claimed any investment credit or amortization or depreciation deductions with respect thereto; and each Unit of Equipment will be placed in service on or before December 31, 1975, within the meaning of Section 1.46-3(d) of the Income Tax Regulations.

(g) Each Unit of Equipment on the date of delivery thereof to the Lessor has a useful life of at least four years beyond the expiration of the term of the Lease and estimated to have a fair market value at the end of the term of the Lease of at least 20% of the Acquisition Cost of such Unit of Equipment.

(h) To Lessee's knowledge and belief, all information or data supplied from time to time by the Lessee in writing to the Trustors or Lessor or the Internal Revenue Service in connection with a Request for Tax Rulings, including but without limitation, all facts relating to the intended use of the Equipment, is and shall continue to be complete and accurate.

## SECTION 15. INDEMNIFICATION FOR LOSS OF CERTAIN TAX BENEFITS.

**15.1 Tax Indemnities.** If for any reason (other than for the reasons set forth in Section 15.2 hereof) any Trustor shall lose, or shall not have, or shall lose the right to claim, or shall suffer disallowance of or shall be required to recapture for income tax purposes (any such event being hereinafter called a "Loss") (i) all or any portion of its pro rata share of the accelerated depreciation deductions (with a basis equal to at least 100% of the Acquisition Cost without regard to salvage value computed on the basis of any of the methods set forth in Section 167(b)(2), (3) or (4) of the Internal Revenue Code of 1954 (including at the option of Trustors, employing the double declining balance method of depreciation, and switching to the sum-of-the-year's-digits method and then to the straight-line method when most beneficial to the Trustors all without the consent of the Commissioner of Internal Revenue) and under circumstances where the Equipment shall constitute eligible property in accordance with Section 1.167(a)-11 of the Income Tax Regulations and utilizing the 12-year depreciable life prescribed for the Equipment in the Asset Guidelines Class No. 00.25 in accordance with Section 167(m) of the Internal Revenue Code and eligible for the "half-year convention" and "modified half-year convention" as provided in Section 1.167(a)-11 of the Income Tax Regulations, (ii) all or any portion of its pro rata portion of interest amounts paid or accrued with respect to the Conditional Sales Indebtedness pursuant to Section 163 of the Code, (iii) all or any portion of its pro rata share of ten percent (10%) investment tax credit in 1975 pursuant to Section 38 and related Sections of the Code, or (iv) all or any portion of its pro rata share of the rent payable hereunder as income from sources within the United States as provided in Section 861 of the Code (such items hereinafter referred to as the "Tax Benefits") or any Tax Benefits warranted with respect to any Modification, and if, as the result thereof, (a) a Trustor suffers an increase in the amount of income tax payable in any taxable year that would not otherwise have been payable in such taxable year, the Lessee shall pay to such Trustor an amount as set forth below in subparagraph (A) hereof, or (b) any Trustor realizes in any taxable year a reduction in the amount of income tax payable that would have otherwise been payable (including, without limitation, a decrease in gain or increase in loss recognized on the disposition of the Equipment or any Unit thereof or on the disposition of an interest in the Trust or any part of the estate thereof), such Trustor shall pay the Lessee a sum as set forth below in subparagraph (B) hereof:

(A) With respect to such increase in income tax payable to such Trustor, the Lessee shall pay to such Trustor an amount which (x) after taking into account all taxes, levies, imposts, duties, charges, or withholdings, and any interest or penalties thereon, under the laws of any federal, foreign, state or local government or taxing authority (all such taxes, levies, imposts, duties, charges or withholdings, and any interest or penalties thereon, hereinafter referred to in this Section 15 as "Charges") required to be paid by such Trustor in respect of the receipt of such payment, and (y) after taking into account any tax benefits to such Trustor resulting from such Trustor having paid any amount in respect to which payment from Lessee is required pursuant to this subparagraph (A), (z) shall be equal to such increase in income tax payable by such Trustor. The sum payable pursuant to this subparagraph (A) shall be payable on the Lease Term Commencement Date or thirty (30) days after such Trustor delivers to Lessee verification of such Loss reasonably satisfactory to Lessee, including without limitation, a statement describing in reasonable detail the Loss and the computation of the amount so payable, whichever first occurs, *provided, however*, that Lessee's obligation under this Section 15.1 shall terminate in the event Lessee purchases the Equipment pursuant to its purchase option under Section 22.1(a).

(B) With respect to such realization by such Trustor of a reduction in income tax payable, such Trustor shall pay to the Lessee an amount which (x) after taking into account all reductions in Charges required to be paid by such Trustor as a result of or in connection with a payment to be made by such Trustor pursuant to subparagraph (B) and (y) after taking into account any increase in Charges resulting from such Trustor having made such payments (z) shall be equal to the amount of such reduction in income tax payable by such Trustor. On realizing any such reduction in income tax payable, such Trustor shall so inform Lessee as promptly as reasonably practicable and shall provide Lessee with verification reasonably satisfactory to Lessee of the amount of such reduction, including without limitation, a statement describing in reasonable detail such reduction and the computation of the amount thereof. The sum payable pursuant to this subparagraph (B) shall be payable on the 15th day of the third month following the close of the taxable year with respect to which such reduction in income tax payable is realized.

**15.2 Limitations on Tax Indemnities for Acts of the Lessor or the Trustors.** Anything in Section 15.1 hereof to the contrary notwithstanding, no payment shall be payable by Lessee to a Trustor and the other consequences of any such Loss as provided in Section 15.1 shall not occur, if and to the extent the Trustor shall have lost, or shall not have, or shall have lost the right to claim, or shall have suffered a disallowance of, or shall have been required to recapture all or any portion of the Tax Benefits indemnified in Section 15.1, as a direct result solely of the occurrence of any of, or combination of, the following events, acts or conditions:

(a) A transfer or other disposition by the Lessor or any Trustor of any interest in any Unit of Equipment, including any Modification thereto, unless a Event of Default shall have occurred and be continuing; *provided, however*, that the execution and delivery of the Documents (as defined in Section 10.2 hereof), including any document contemplated hereby or thereby in the carrying out of the transactions contemplated herein and therein and the use, operation, possession and maintenance of the Equipment as contemplated in this Lease shall not be deemed to have caused the loss of such tax benefits under this clause (a);

(b) The failure of Lessor or any Trustor to claim in a timely manner the Tax Benefits indemnified in this Section 15, or to make any timely or appropriate election of or in connection with the same, or to take any action appropriate or necessary to the availability of the same;

(c) The failure of Lessor or any Trustor to have sufficient liability for income tax against which to credit such investment credit or sufficient income to benefit from such depreciation or interest deductions, as applicable;

(d) The failure of Lessor or any Trustor to notify Lessee of or to take timely action in contesting a claim made or action taken by the Internal Revenue Service with respect to the disallowance of such



Tax Benefits, the failure to give such notice or take such action in a timely manner shall have precluded the right of Lessee to contest such claim or action, or a failure on the part of Lessor or any Trustor to take action to contest any such claim after a timely request to conduct such contest has been given by Lessee to Lessor pursuant to Section 15.5 hereof, or the release, waiver, compromise or settlement of any action or proceeding taken pursuant to Section 15.5 hereof by Lessor or any Trustor without the prior written consent of Lessee.

**15.3 Limitation on Tax Indemnities After the Receipt of a Favorable Tax Ruling.** If the Trustors and the Lessee shall receive a favorable tax ruling from the Internal Revenue Service stating that the Trustors shall be entitled to all of the Tax Benefits (as defined in Section 15.1 hereof), anything in Sections 15.1 or 15.2 hereof to the contrary notwithstanding, payment shall be payable by Lessee to a Trustor and the other consequences of any such Loss as provided in Section 15.1 shall occur only if such Loss was caused by any act or failure to act of Lessee whatsoever, including, without limitation, the following:

(a) Any information furnished by the Lessee to the Lessor or any Trustor for uses relating to an Internal Revenue Service Ruling obtained pursuant to Section 15.1 of the Participation Agreement (and certified by an officer of the Lessee) proving to be fraudulent, untrue, incorrect, inaccurate, misleading, unreasonable or insufficient in whole or in part;

(b) The Lessee, or any officer, employee, agent or counsel thereof, failing to state any material fact in connection with the obtaining of such Ruling;

(c) The Lessee, or any officer, employee, agent or counsel thereof, taking or failing to take any action whatsoever (including, without limitation, any action in respect of the Lessee's income tax returns) which is inconsistent with or in contravention of any of the matters set forth in such Ruling or which constitutes a breach of any representation or warranty set forth in clauses (f) and (g) of Section 14 hereof; or

(d) The Lessee, or any officer, employee or agent thereof using or otherwise dealing with or causing or permitting any other person to use or operate or deal with the Equipment in any manner which will result in a loss of any Tax Benefits (as defined in Section 15.1 hereof) to the extent such use, operation or dealing would cause such loss under the Internal Revenue Code and the Income Tax Regulations promulgated thereunder.

**15.4. Consolidated Returns.** Wherever within this Section 15 reference is made to the income tax liability, or the income tax return of a Trustor, such reference shall for any taxable year of such Trustor for which the Trustor is a member of an affiliated group of domestic corporations which file a consolidated income tax return and which such Trustor joins, be deemed to refer to the consolidated income tax liability of such group or to the consolidated income tax return of such group, as the case may be.

**15.5 Contest of Loss of Tax Benefits.** In the event that the Lessee requests that a Loss of Tax Benefits be contested (or in the event that the parties shall mutually agree to such contest), (a) the Trustors agree to take such action in respect to such contest as the Lessee shall reasonably request in writing from time to time and to keep the Lessee informed as to the progress of such contest, but only if the Lessee shall have (i) made provision to reimburse the Trustors in a manner satisfactory to them for all reasonable costs and expenses (including, without limitation, legal fees and expenses) which the Trustors may incur in connection with such contest and (ii) in the event that the Lessee shall have requested the Trustors to contest a Loss of Tax Benefits (with which request the Trustors do not agree), furnished the Trustors with an opinion of independent tax counsel, reasonably satisfactory to the Trustors, to the effect that a reasonable defense exists to such claim and (b) the Lessee shall have the right to approve counsel for the Trustors, which approval shall not be unreasonably withheld; *provided, however*, that each Trustor, at its sole option, may forego any and all administrative appeals, proceedings, hearings and conferences with the Internal Revenue Service in respect of such contest and may, at its sole option, either pay the tax claimed and sue for a refund in the appropriate United



States District Court or the United States Court of Claims, as such Trustor shall elect, or contest such claim in the United States Tax Court, considering, however, in good faith such request as the Lessee shall make concerning the most appropriate forum in which to proceed.

**15.6 Expenses.** In the event that a Loss of Tax Benefits is contested pursuant to Section 15.5 hereof, Lessee agrees to reimburse Lessor and each Trustor for the reasonable costs and expenses (including without limitation legal fees and expenses) which Lessor or each Trustor may incur in connection with such contest.

#### **SECTION 16. EVENTS OF DEFAULT.**

(a) The following shall be events of default hereunder:

(i) Default, and continuance thereof for 10 days, in the payment of any rent or other amount hereunder;

(ii) The Lessee shall, for more than 30 days after the Lessor shall have demanded in writing thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Lease or of any agreement entered into concurrently herewith relating to the financing of the Equipment on its part to be kept or performed or to make provision satisfactory to the Lessor for such compliance;

(iii) Any representation or warranty made by the Lessee in Section 14 of this Lease is untrue in any material respect, or any statement, report, schedule, notice, or other writing furnished by the Lessee to the Lessor in connection herewith is untrue in any material respect, on the date as of which the facts set forth are represented, warranted, stated or certified;

(iv) A petition for reorganization under Section 77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Lessee and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier;

(v) Any other proceeding shall be commenced by or against the Lessee for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the rents and other amounts payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Lessee under this Lease shall not have been duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Lessee or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier;

(vi) The Lessee shall make or permit any unauthorized assignment or transfer of this Lease or any interest herein or any unauthorized transfer of the right to possession of any Unit of the Equipment; or

(vii) The Government Guaranty shall, for any reason, cease to be in full force and effect; or

(viii) An event of default shall have occurred under the Conditional Sale Agreement arising out of the failure of Lessee to perform its obligations under this Lease.

When used herein, unless the context otherwise requires, the term "event of default" shall mean any event described in the foregoing clauses (i) through (viii) and the term "event which might mature into an event of default" shall mean any event which with the lapse of time, or with notice to the Lessee and lapse of time, would constitute an event of default. To the extent of its knowledge thereof, the Lessee shall give the Lessor prompt notice of any event of default or of any event which might mature into an event of default.

(b) Upon the happening of an event of default, the Lessor shall (except to the extent otherwise required by law) be entitled to:

(1) Proceed by appropriate court action or actions to enforce performance by the Lessee of the applicable covenants and terms of this Lease or to recover damages for the breach thereof;

(2) Repossess any or all Units of Equipment without prejudice to any remedy or claim hereinafter referred to;

(3) Elect to sell at one or more public or private sales or relet any or all Units of Equipment, after giving 30 days' notice to the Lessee, and recover from the Lessee as liquidated damages for the Lessee's default hereunder an amount equal to the amount, if any, by which (A) the sum of (i) the aggregate of the applicable amount set forth in the schedule attached hereto as Schedule B (herein "Schedule B") of such Units of Equipment on the date such notice is given, (ii) all rent owing or accrued hereunder to and including the date such notice is given, (iii) all costs and expense (including sales tax) reasonably incurred in searching for, taking, removing, keeping, storing, repairing, restoring and selling such Units of Equipment, (iv) all other amounts owing by the Lessee hereunder, whether as additional rent, indemnification or otherwise, and (v) all reasonable costs and expenses (including without limitation legal fees and expenses) incurred by the Lessor as a result of the Lessee's default hereunder, exceeds (B) the amount received by the Lessor upon such public or private sales of such Units of Equipment and the greater of the fair rental value of or the aggregate rent contracted for any Units relet by Lessor, discounted to present worth at the rate of 7.92% per annum;

(4) Upon notice to the Lessee receive prompt payment from Lessee of an amount equal to the aggregate of the applicable amount set forth in Schedule B computed as of the rent payment date next preceding the date such notice is given of all Items of Equipment which have not been sold or relet by the Lessor pursuant to Section 16(b)(3) above plus, to the extent not otherwise recovered from the Lessee pursuant to said Section 16(b)(3) above, (i) any rent owing or accrued hereunder to and including the date such notice is given, (ii) all costs and expenses reasonably incurred in searching for, taking, removing, keeping, storing, repairing and restoring such Units of Equipment, (iii) all other amounts owing by the Lessee hereunder, whether as additional rent, indemnification or otherwise, and (iv) all reasonable costs and expenses, including, without limitation, legal fees and expenses, incurred by the Lessor as a result of the Lessee's default hereunder; *provided* that upon receipt of payment in full of such amount, the Lessor shall deliver to the Lessee a bill of sale for the Units of Equipment and Modifications thereto then subject to this Lease as provided in Section 22.1 hereof;

(5) By notice to the Lessee declare this Lease terminated without prejudice to the Lessor's rights in respect of obligations then accrued and remaining unsatisfied; or

(6) Avail itself of any other remedy or remedies provided for by any statute or otherwise available at law, in equity or in bankruptcy or insolvency proceedings.

The remedies herein set forth or referred to shall be cumulative. The references to additional rent in clauses 3 and 4 of this paragraph (b) shall each include, without limitation, interest at the Overdue Rate (as defined in Section 21 hereof), to the date of receipt by the Lessor of the amount payable under said clause, on installments of rent owing hereunder to and including the rent payment date immediately preceding the date on which notice is given under said clause, from the respective due dates of such installments, and interest at said rate on all other reasonable costs, expenses and losses for which the Lessor is entitled to payment under said clause from the respective dates incurred by the Lessor.

The Lessee hereby waives any requirements of law, now or hereafter in effect, which might limit or modify the remedies herein provided to the extent such waiver is permitted by law. The failure of the Lessor to exercise the rights granted hereinbefore upon the occurrence of any event of default shall not constitute a waiver of any such right upon the continuation or recurrence of any such event of default.

It is agreed that the rights and remedies of the Lessor hereunder shall be subject to the rights and remedies of the Federal Financing Bank.

#### SECTION 17. RETURN OF EQUIPMENT UPON DEFAULT.

**17.1 Lessee's Duty to Return.** If the Lessor shall terminate this Lease pursuant to Section 16 hereof, the Lessee shall forthwith deliver the Equipment including each Modification thereto to the Lessor and store and transport the Equipment as provided in Section 13 hereof.

**17.2 Specific Performance.** The making available, storage and transporting of the Equipment as provided in this Section 17 are of the essence of this Lease, and, upon application to any court of equity having jurisdiction in the premises, the Lessor shall be entitled to a decree against the Lessee requiring specific performance of the covenants of the Lessee to so deliver, store and transport the Equipment.

**17.3 Lessor Appointed Lessee's Agent.** Without in any way limiting the obligations of the Lessee under the foregoing provisions of this Section 17, the Lessee (to the extent of its corporate power) hereby irrevocably appoints the Lessor as the agent and attorney of Lessee, with full power and authority, at any time while the Lessee is obligated to make available any Units of Equipment to the Lessor pursuant to Section 16 hereof, to demand and take possession of such Unit in the name and on the behalf of the Lessee from whomsoever shall be at the time in possession of the Item.

#### SECTION 18. ASSIGNMENTS BY LESSOR: SUCCESSOR TRUSTEES.

**18.1 Assignments by Lessor.** The benefits of this Lease shall be assignable (but only as an entirety) by the Lessor without the consent of the Lessee to a single institutional corporate agent or trustee acting for institutional corporate lenders, or to a single institutional corporate lender, of recognized standing, or to any agency or instrumentality of the United States Government, but the Lessee shall be under no obligation to any assignee of the Lessor except upon written notice of such assignment from the Lessor; *provided* that any such assignment by the Lessor (other than to Federal Financing Bank as collateral security pursuant to the "Assignment of Lease and Agreement" dated as of June 1, 1975, between Lessor and Federal Financing Bank, Federal Financing Bank its successors and assigns herein referred to as "Federal Financing Bank"), shall make appropriate provision for the assumption by the assignee of the obligations of the Lessor under the Sale and Lease Back Agreement. Upon notice to the Lessee of any such assignment the rent and other sums payable by the Lessee which are the subject matter of the assignment shall be paid to the assignee at the place and in the manner set forth in Section 2.3. Without limiting the foregoing, the Lessee further acknowledges and agrees that (i) the rights of any such assignee in and to the sums payable by the Lessee under any provisions of this Lease shall not be subject to any abatement whatsoever, and shall not be subject to any defense, set-off, counterclaim or recoupment whatsoever whether by reason of or defect in the Lessor's title (except for any defect or failure of title resulting from acts or omissions of the Lessor), or any interruption from whatsoever cause (other than from a wrongful act of the Lessor or the assignee) in the use, operation or possession of the Equipment or any part thereof, or any damage to or loss or destruction of the Equipment or any part thereof, or by reason of any other indebtedness or liability, howsoever, and whenever arising, of the Lessor to the Lessee or to any other person, firm or corporation or to any governmental authority or for any cause whatsoever, it being the intent hereof that, except as aforesaid, the Lessee shall be unconditionally and absolutely obligated to pay the assignee all of the rents and other sums which are the subject matter of the assignment, and (ii) the

assignee shall have the sole right (except as otherwise provided in such assignment) to exercise all rights, privileges, and remedies (either in its own name or in the name of the Lessor for the use and benefit of the assignee) which by the terms of this Lease are permitted or provided to be exercised by the Lessor. The term "Lessor" as used in this Lease shall mean the original Lessor, any permitted assignee and any successor trustee appointed in accordance with the provisions of Section 18.2 hereof.

**18.2 Successor Trustees.** The Lessee agrees that in the case of the appointment of any successor trustee in accordance with the terms of the Trust Agreement, such successor trustee shall, upon written notice of such appointment to the Lessee by the Lessor, succeed to all the rights, powers and title (subject to the obligations) of the Lessor hereunder, without the necessity of any consent or approval by the Lessee and without in any way altering the terms of this Lease or the Lessee's obligations hereunder. One such appointment of a successor trustee shall not preclude the further appointment of successor trustees. Any successor trustee shall be a bank or trust company organized under the laws of the United States or of any state thereof, having a combined capital and surplus of at least \$50,000,000 and a member of the Federal Reserve System.

## SECTION 19. ASSIGNMENTS BY LESSEE; USE AND POSSESSION.

**19.1 Lessee's Rights to the Equipment.** So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and use of the Equipment in accordance with the terms of this Lease, but, subject to Section 19.2 hereof, without the prior written consent of the Lessor, the Lessee shall not assign, transfer or encumber its leasehold interest under this Lease in any of the Equipment. The Lessee shall not sublease any Unit of Equipment or, without the prior written consent of the Lessor, part with the possession or control of, or suffer or allow to pass out of its possession or control, any of the Equipment, except to the extent permitted by the provisions of Section 19.2 hereof.

**19.2 Use and Possession by Lessee.** So long as the Lessee shall not be in default under this Lease, the Lessee shall be entitled to the possession and/or use of the Equipment (by itself or by others on its behalf) in accordance with the terms hereof upon the rail lines over which the Lessee conducts, or has conducted for it, rail passenger service.

**19.3 Merger, Consolidation or Acquisition of Lessee.** Lessee may assign or transfer its leasehold interest under this Lease in the Equipment or possession of the Equipment to any corporation, governmental agency or other entity (which shall have duly assumed the obligations hereunder of the Lessee), into or with which the Lessee shall have become merged or consolidated or which shall have acquired the property of the Lessee as an entirety or substantially as an entirety.

## SECTION 20. INSURANCE.

**20.1 Lessee's Covenant to Carry Insurance.** The Lessee will cause to be carried and maintained at all times and at its own expense during the term of this Lease physical damage insurance and public liability insurance (which includes, but is not limited to, liability for property damage and/or personal injury) covering the Equipment and Modifications thereto in the names of the Lessor, Trustors, Federal Financing Bank and Lessee (as their interest may appear) in such form as is commonly maintained on comparable equipment by companies similarly situated. In all events the Lessee will cause to be carried and maintained in the name of the Lessor, Trustors, Federal Financing Bank and Lessee (as their interests may appear) insurance against all risks of physical damage to the Equipment as provided under a standard all-risk policy. Such standard all-risk physical damage insurance policy or policies shall provide that all losses thereunder will be adjusted with the Lessor, Trustors, Federal Financing Bank and Lessee and will be payable to the Lessor, Trustors, Federal Financing Bank and Lessee as their respective interests shall appear. It is agreed that the standard all-risk physical damage policy or policies shall provide coverage of at least \$5,000,000 for each occurrence and may provide for a deductible of not more than \$500,000 with respect to any one loss (provided, however, that such policy or policies may provide for a deductible of not more than \$1,000,000 with respect to any one

loss, if such policy or policies shall provide for coverage of at least \$10,000,000 for each occurrence) and that the public liability policy or policies shall provide coverage of at least \$48,000,000 for each occurrence and may provide for a deductible of not more than \$2,000,000 with respect to any one loss. Any net insurance proceeds resulting from insurance carried by the Lessee received by the Lessor in respect of Units of Equipment suffering a Casualty Occurrence shall be deducted from the amounts payable by the Lessee to the Lessor in respect of any Casualty Occurrence pursuant to Section 11 hereof. If the Lessor shall receive any such net insurance proceeds after the Lessee shall have made payments pursuant to Section 11 hereof, without deduction for such net insurance proceeds, the Lessor shall pay such proceeds to the Lessee up to an amount equal to the Casualty Value with respect to a Unit paid by the Lessee and any balance of such proceeds shall remain the property of the Lessor.

**20.2 Evidence of Insurance.** The policies of insurance required under this Section 20 shall be valid and enforceable policies issued by insurers of recognized responsibility reasonably acceptable to the Lessor. Evidence in the form of an Insurance Certificate and related endorsements of each and every policy shall be provided to Lessor, Federal Financing Bank and each Trustor on or before the Closing Date for the first Unit or Units of Equipment. Lessee shall satisfy Lessor that the above-described insurance is fully in effect on each Unit of Equipment, to the extent applicable, on the Closing Date of each Unit of Equipment. "Insurance Certificate" shall mean a certificate with respect to the insurance required to be maintained pursuant to Section 20 hereof, signed by an independent insurance broker (who may be the broker regularly retained by Lessee) reasonably acceptable to Lessor, which shall describe the risks covered by each policy of insurance then in force covering risks related to the Equipment, identify the insurer with which such policies of insurance are carried and maintained, specify the amount of insurance coverage provided against each such risk or class of risk, and state that all such policies of insurance comply in all respects with the provisions of Section 20 of this Lease.

Lessor's acknowledged acceptance of, its failure to object in writing within 45 days following receipt to, or its action on, such a certificate shall be sufficient evidence that such certificate is acceptable to Lessor.

The original policies, which shall be available for inspection by the Lessor at the Lessee's Washington, D. C., office upon reasonable request, may be blanket policies covering other equipment not covered by this Lease provided that any blanket policy shall, in the Endorsements provided herein, specifically designate the Units of Equipment as being included therein and covered thereby to the full extent of the amounts herein required and shall name the Lessor, Trustors and Federal Financing Bank as insured parties thereunder with respect to such Units of Equipment. All such policies shall:

(a) Contain an agreement by the insurers that such policies shall not be cancelled or the amount of coverage thereof or persons covered thereunder be adversely changed without at least 30 days' prior written notice to the Lessor and Federal Financing Bank by the insurers or the insurers' authorized representative, as the case may be;

(b) Contain a breach or violation of warranties, declarations, or conditions clause which shall provide that the interests of the Lessor and the Trustor thereunder shall not be rescinded, impaired, or invalidated by an act or omission of the Lessee or any other person;

(c) Not contain a limitation on the amount payable thereunder with respect to the use of the Equipment for purposes other than those permitted by the terms of the policy, any change in title or ownership of the Equipment or any foreclosure or other proceeding or notice of sale relating to the Equipment, this Lease, or the Agreement and Assignment;

(d) Be primary without right of contribution from any other insurance which is carried by Lessor, any Trustor or Federal Financing Bank and shall expressly provide that all provisions thereof, except the limits of liability, shall operate in the same manner as if there were a separate policy covering each insured; and

(e) Each such policy shall waive any right of subrogation of the insurers to any right of the Lessor, Lessee, any Trustor or Federal Financing Bank against any person insured under such policy and shall waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of the Trustor, Federal Financing Bank, the Lessor or the Lessee.

## SECTION 21. INTEREST ON OVERDUE RENTALS AND AMOUNTS PAID BY LESSOR.

Anything to the contrary herein contained notwithstanding, any nonpayment of amounts due hereunder, or amounts reasonably expended by the Lessor on behalf of the Lessee, shall result in the obligation on the part of the Lessee to pay also, as additional rent hereunder, interest (at the rate as provided in paragraph (a) or (b) of this Section 21 and herein the "Overdue Rate") on the overdue amounts and such amounts so expended for the period of time during which they are overdue or expended and not repaid as follows:

(a) On overdue amounts (other than interim rent and the first twenty-six installments of periodic rent payable under Section 2.1(a) and (b) hereof) and amounts expended by Lessor on behalf of the Lessee, at a rate equal to the lesser of the following per annum rates (computed on the basis of a 365-day year): the highest rate then permitted by law or the rate equal to the sum of (i) 69.75% multiplied by the Debt Rate (as defined in the Conditional Sale Agreement) plus (ii) 6.4758%, on such amounts;

(b) On overdue amounts of interim rent and the first twenty-six installments of periodic rent payable under Section 2.1(a) and (b) hereof, at a rate equal to the lesser of the following per annum rates (computed on the basis of a 365-day year); the highest rate then permitted by law or the rate equal to the sum of (i) 69.75% multiplied by the Debt Rate (as defined in the Conditional Sale Agreement) plus (ii) 3.63%, on such overdue rent.

## SECTION 22. OPTIONS TO PURCHASE AND RENEW.

**22.1 Option to Purchase.** Provided that the Lessee is not in default, the Lessee shall have the following options to purchase all but not less than all of the Equipment and Modifications thereto:

(a) Pursuant to Section 3 hereof, at an option price equal to the greater of (i) the fair market value of the Equipment or (ii) the sum of (A) the Acquisition Cost of the Equipment, (B) all interim rent on the Equipment accrued to the Term Lease Commencement Date, (C) the amount of all out-of-pocket expenses, including attorneys fees and brokers fees, in the amount of 0.65% of the total Acquisition Cost specified in Section 1.1 hereof, incurred by the Trustors in connection with the negotiation of the documents and the implementation of the transactions contemplated thereby, and (D) by reason of Lessee's exercise of this option to purchase, the amount of all out-of-pocket expenses, including without limitation, attorney's and appraiser's fees reasonably incurred by Lessor by reason of Lessee's exercise of this option to purchase, (but not including any indemnity for Tax Benefits as defined herein), less (iii) the amount of the Conditional Sale Indebtedness not previously paid. The purchase price payable hereunder shall be due and payable on the Term Lease Commencement Date.

(b) Pursuant to Sections 7 and 8 hereof at an option price equal to the greater of (i) the fair market value (as hereinafter defined) of the Equipment or (ii) the sum of (A) the aggregate of the applicable amount for each Unit of Equipment as set forth in Schedule C (computed as of the rent payment date next preceding the date notice of Lessee's election to exercise its purchase option is given to Lessor) and (B) all rent accruing to the rent payment date next succeeding the notice to Lessor of Lessee's election to exercise its purchase option, less (iii) the amount of the Conditional Sale Indebtedness not previously paid. The option price shall be due and payable on said rent payment date.

(c) At the expiration of the term of this Lease (including any renewal term) at an option price equal to the fair market value (as hereinafter defined). The Lessee shall give the Lessor notice 180

days prior to the end of the term of its election to exercise the purchase option provided for in this paragraph. Unless the Lessee has given the Lessor 180 days' notice as required in connection with exercise of this option, all the Equipment then leased hereunder shall be returned to the Lessor in accordance with Section 13 hereof.

Payment of the option price shall be made at the place of payment specified in Section 2 hereof in funds then current against delivery of a bill of sale transferring and assigning to the Lessee all right, title and interest of the Lessor in and to the Equipment and containing Lessor's Warranty, but without any other representation or warranty, express or implied, as to the condition of the Equipment or any other matters. Notwithstanding the giving of notice to Lessor by the Lessee of its election to exercise a purchase option, the Lessee shall not be obligated to purchase the Equipment *provided* the Lessee shall have advised the Lessor within 15 days after the determination of an option price under this Section 22.1 that the Lessee has decided not to purchase the Equipment, and shall have paid Lessor all costs and expenses, including without limitation attorney's fees, incurred by Lessor by reason of Lessee's election to exercise a purchase option.

The "fair market value" shall be an amount mutually agreed upon by the Lessor and the Lessee; *provided* that if the Lessor and the Lessee are unable to agree upon the fair market value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise its purchase option, the fair market value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market value is not so determined within 90 days after receipt by the Lessor of the Lessee's election to purchase, the same shall be determined by American Appraisal Company or its successor. Costs and expenses incurred in connection with any such appraisal shall be borne by the Lessee.

There shall be deducted from the fair market value determined hereunder an amount equal to the portion of the fair market value of the Equipment which is attributable to any Lessee Improvement which resulted in an increase in the fair market value of the Equipment, determined as above provided, as of the date of determination, as compared with the fair market value the Equipment would have had, as of the date of determination, without such Lessee Improvement, determined as above provided. The term "fair market value of a Lessee improvement" shall mean, when used elsewhere in this Lease, the portion of the fair market value of a Unit of Equipment which is attributable to any Lessee Improvement, determined as aforesaid.

In the event that Lessee does not exercise its option to purchase pursuant to this Section 22, at the termination of this Lease, or any renewal thereof, Lessor may, but shall not be required to, purchase any or all Lessee Improvements. Lessor shall make payment to Lessee for any such Lessee Improvements Lessor elects to purchase pursuant to this paragraph, an amount equal to the fair market value of such Lessee Improvement as determined under this Section 22.1.

Notwithstanding any election of the Lessee to purchase, the provisions of Section 11 hereof shall continue in full force and effect until the date of purchase and the passage of ownership of the Equipment purchased by the Lessee upon the date of purchase; *provided, however*, that with respect to any Casualty Occurrence occurring after notice to Lessor of Lessee's election to exercise a purchase option, if the option price has been agreed upon by the parties pursuant to this Section 22, such option price shall govern the amount of the payment to be made in the event of a Casualty Occurrence.

**22.2 Option to Renew.** *Provided* that the Lessee is not in default, the Lessee shall have the following renewal options:

(a) The Lessee shall have the option to renew and extend this Lease as to such Units of Equipment as it may elect for four additional renewal terms of one year each upon and subject to the terms and conditions herein contained for the original term of this Lease excepting only that the Periodic Rent for each such renewal term, which shall be payable semiannually in arrears during each such



term, shall be an amount equal to the "fair market rental value" (as hereinafter defined) of such Equipment including Modifications thereto. Each such renewal term shall commence immediately upon the expiration of the preceding term. The Lessee shall give the Lessor notice not less than 180 days prior to the end of the original term or of the then current renewal term of its election to exercise any renewal option provided for by this Section 22.2. Notwithstanding the giving of any notice by the Lessee as aforesaid, the Lessee shall not be obligated to renew and extend this Lease for the renewal term covered by such notice if the Lessee shall advise the Lessor within 15 days after the determination of the rental for such renewal term under this Section 22.2 that the Lessee has decided not to rent the Equipment for such renewal term.

(b) The "fair market rental value" shall be an amount mutually agreed upon by the Lessor and the Lessee; *provided* that if the Lessor and the Lessee are unable to agree upon the fair market rental value of the Equipment within 30 days after receipt by the Lessor of the notice of the Lessee's election to exercise any renewal option, the fair market rental value shall be determined by an appraiser selected by mutual agreement of the Lessor and the Lessee. If the Lessor and the Lessee are not able to agree upon an appraiser, or if the fair market rental value is not so determined within 60 days after receipt by the Lessor of the Lessee's election to renew, the same shall be determined by American Appraisal Company or its successor. Costs incurred in connection with any such appraisal shall be borne by the Lessee.

(c) There shall be deducted from the rental payable hereunder for any renewal term an amount equal to the portion of the fair market rental value of the Equipment which is attributable to Lessee Improvements, which resulted in an increase in the fair market rental value of the Equipment, determined as above provided, for such renewal term, as compared with the fair market rental value the Equipment would have had, for such renewal term, without such Lessee Improvements, determined as above provided.

#### SECTION 23. CONCERNING THE LESSOR.

It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, covenants, undertakings and agreements herein made on the part of the Lessor, while in form purporting to be the representations, covenants, undertakings and agreements of Seattle-First National Bank, a national banking association, are nevertheless each and every one of them made and intended not as personal representations, covenants and undertakings and agreements of it in its individual corporate capacity or for the purpose or with the intention of binding it in its individual corporate capacity, but are made and intended for the purpose of binding only the Trust Estate as that term is used in the Trust Agreement (a true copy of which Trust Agreement has been delivered by the Lessor to the Lessee, initialled for identification by an Authorized Officer of the Lessor), the Trustee under such Trust Agreement is the Lessor hereunder, and this Lease is executed and delivered by Seattle-First National Bank, a national banking association, not in its own right but solely in the exercise of the powers conferred upon it as trustee under the Trust Agreement; and no liability or responsibility in its individual corporate capacity is assumed by nor shall at any time be asserted or enforceable against said Association, or any incorporator or any past, present or future subscriber to the capital stock of said Association, on account of this Lease, the Sale and Lease Back Agreement or the Participation Agreement or on account of any representation, covenant, undertaking or agreement of said Association in this Lease or the Sale and Lease Back Agreement contained, either expressed or implied, all such individual corporate liability, if any, being expressly waived and released by the Lessee herein and by all persons claiming by, through or under the Lessee; excepting, however, that the Lessee or any person claiming by, through or under it, making claim hereunder, may look to said Trust Estate for satisfaction of the same. Except as provided in Section 24.9 hereof, each representation, covenant, undertaking and agreement herein made on the part of the Lessor (including, without limitation, the Lessor's Warranty set forth in Section 5 hereof), for itself or for the Trustors,



shall be deemed to have been made by each Trustor, to the extent of its pro rata interest, as well as by the Lessor. The Lessor hereby represents to the Lessee that it has full and irrevocable power and authority to bind each Trustor in accordance with the preceding sentence.

#### SECTION 24. MISCELLANEOUS.

**24.1 Approvals of the Administrator.** The parties agree that before any amendment or modification (other than to the Specifications) of this Lease, or any assignment or transfer of the interest of the Lessor hereunder (other than to insurance companies, commercial savings banks and financing corporations of recognized standing organized under the laws of the United States or of any state thereof) or of the interest of the Lessee hereunder, becomes effective, the Administrator must approve the same in writing, which approval shall not be unreasonably withheld. In consideration of his guarantee of the Lessee's financial obligations under this Lease, the Administrator shall have the right to enforce this provision irrespective of any other provisions of this Lease.

**24.2 Lessor Is Owner.** This Lease shall constitute an agreement of lease, and nothing herein shall be construed as conveying to the Lessee any right, title or interest in any Unit of Equipment and Modifications thereto except as a lessee only. The Lessor and the Lessee agree that for all Federal, state and local income tax purposes the Lessor, on behalf of Trustors, will be the owner and lessor of the Equipment and that the Lessee will be the lessee. In addition, nothing contained herein shall be construed as an election by the Lessor or Trustors to treat the Lessee as having acquired any Unit of Equipment for purposes of the investment credit allowed by Section 38 of the Code, and the Lessor, the Trustors and the Lessee agree that they will not make such an election.

**24.3 Trustee's Fees.** The Lessee agrees to pay the Lessor's fees and reasonable expenses, as trustee under the Trust Agreement, for the acceptance and administration of the trust. The Lessee will reimburse the Lessor for such fees and expenses promptly upon notice from the Lessor of the amount thereof. It is agreed that the Lessor's fee for acceptance of the trust and administration shall be equal to \$4,000 in the first year of the Trust and \$1,000 annually thereafter (or a greater amount if an event of default hereunder shall occur), together with reasonable attorneys' fees for counsel for the Lessor, which fees shall not exceed \$7,500.

**24.4 Action by Lessee.** Except as otherwise specifically provided herein, any provision in this Lease that the Lessee shall take any action shall require the Lessee to do so at its sole cost and expense.

**24.5 Lessor's Right to Perform.** If the Lessee fails to make any payments required by this Lease, or to perform any of its other obligations contained herein, the Lessor may itself, but shall not be required to, make any such payments or perform any such obligations and, in making such payments, the Lessor may rely on invoices and other documents evidencing the amounts required to be paid, which are reasonably satisfactory to it. The amount of any such payment and the Lessor's reasonable costs and expenses, including (without limitation) legal fees and expenses in connection therewith and with such performance, shall thereupon be and become payable by the Lessee to the Lessor upon demand.

**24.6 Notices.** Any notice or other communication hereunder shall be in writing and, if mailed, shall be deemed to be given on the second day after it is sent by registered or certified mail, postage prepaid and addressed: (i) if to Lessee, at 955 L'Enfant Plaza North, S.W., Washington, D.C., 20024, Attention: Secretary; (ii) if to Lessor, at P.O. Box 24186, Seattle-First National Bank, Seattle, Washington 98124, Attention: Corporate Trust Department; (iii) if to any assignee of the Lessor of rights hereunder, at such address as may have been furnished in writing to the Lessor and the Lessee by such assignee, or (iv) to a party at such other address as it may, by written notice received by the other parties designate as its address for purposes of notice hereunder.

**24.7 Law Governing, Etc.** If this Lease or any provision hereof shall be deemed invalid, illegal or unenforceable in any respect or in any jurisdiction, the validity, legality and enforceability of this

Lease in other respects and other jurisdictions shall not be in any way impaired or affected thereby. Each of the parties hereto acknowledges that the other party shall not by act, delay, omission or otherwise be deemed to have waived any of its rights or remedies under this Lease unless such waiver is in writing, and such writing shall be binding only to the extent therein provided and only upon the party signing it. A waiver on any one occasion shall not be construed as a waiver on any future occasion. Without limiting the foregoing, the Lessor's rights and the Lessee's duties shall in no way be affected by the Lessor's inspection of, or failure to inspect, the Equipment or any Unit thereof. The Lessee hereby waives any right to assert that the Lessor cannot enforce this Lease (or that this Lease is invalid) because of any failure of the Lessor to qualify to do business in any jurisdiction. This Lease shall be governed by the laws of the District of Columbia and shall be binding upon and inure to the benefit of the Lessor and the Lessee and their respective successors and assigns; *provided, however*, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof, as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited.

**24.8 Section Headings.** The Table of Contents and Section headings in this Lease are for convenience of reference only and shall not be considered to be a part of this Lease.

**24.9 Lessor's Authorization.** The Lessor represents to the Lessee that the execution, delivery and performance of this Lease, the Sale and Lease Back Agreement, the Trust Agreement, the Participation Agreement and the Government Guaranty are within the corporate power of the Lessor, have been duly authorized by all necessary corporate and other action and are, and at all times will be, authorized under the Trust Agreement.

**24.10 Modification of Lease.** No variation or modification of this Lease shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

**24.11 Trustor Defined.** The term "Trustors" as used herein means Seattle-First National Bank, The Fifth Third Leasing Company and the Union Trust Company of the District Columbia, Trustors under the Trust Agreement dated as of May 1, 1975 (the "Trust Agreement"), among the Trustors and the Lessor, and their respective successors in interest and assigns under said Trust Agreement as permitted by Section 13 of the Participation Agreement.

**24.12 Execution in Counterparts.** This Lease, and any lease supplemental hereto, may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument. Although this Lease is dated as of the date first set forth above, for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed by their respective officers thereunto duly authorized and their corporate seals to be hereto affixed.

[CORPORATE SEAL]

Attest:

A. L. YECA *Authorized Officer*  
CORPORATE TRUST OFFICER  
SEATTLE-FIRST NATIONAL BANK  
[CORPORATE SEAL]

Attest:

*Authorized Officer*

SEATTLE-FIRST NATIONAL BANK,  
a national banking association, as Trustee

By

*Authorized Officer*

R.M. DAGG  
ASST. VICE PRESIDENT  
& TRUST OFFICER

NATIONAL RAILROAD PASSENGER CORPORATION

By

*Authorized Officer*

**Guaranty by Department of Transportation**

The Deputy Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America does hereby guarantee the prompt payment of the Guaranteed Lease Obligations, pursuant to and in accordance with the Guaranty Agreement dated July 16, 1975, among the Deputy Federal Railroad Administrator of the Department of Transportation of the United States of America, as Guarantor, Seattle-First National Bank, a national banking association, as Trustee, and Federal Financing Bank.

DEPUTY FEDERAL RAILROAD ADMINISTRATOR

Attest:

Christopher S. Moffitt  
Counsel, FRA

By Joseph A. Hall  
Deputy Federal Railroad Administrator, Guarantor

STATE OF WASHINGTON }  
COUNTY OF KING } ss.

On this 28<sup>th</sup> day of June, 1975, before me personally appeared R.M. DABO, to me personally known, who being by me duly sworn, says that he is an Authorized Officer of Seattle-First National Bank, a national banking association, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Don A. Bay  
Notary Public in and for the State of Washington  
My Commission Expires: Sept 15, 1975

[Seal]

CITY OF WASHINGTON }  
DISTRICT OF COLUMBIA } ss.

On this 8<sup>th</sup> day of June, 1975, before me personally appeared Don R. Beazier, to me personally known, who being by me duly sworn, says that he is a TREAS. of NATIONAL RAILROAD PASSENGER CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Quayle P. Linsell  
Notary Public in and for the District of Columbia

My Commission Expires: 9-30-76

[Seal]

CITY OF WASHINGTON }  
DISTRICT OF COLUMBIA } ss.

On this 17<sup>th</sup> day of July, 1975, before me personally appeared ASAPH H. HALL, to me personally known, who being by me duly sworn, says that he is the Deputy Federal Railroad Administrator, that the foregoing instrument was signed by him by authority duly delegated to him by the Secretary of Transportation; and he acknowledged that the execution of the foregoing instrument was his free act and deed as the Deputy Federal Railroad Administrator.

Roy Boyle  
Notary Public in and for the District of Columbia

My Commission Expires: my Commission Expires April 30, 1977

[Seal]

# SCHEDULE A

## DESCRIPTION OF EQUIPMENT\*

Type	Quantity	Manufacturer's Specifications	Place of Acceptance	R.R. nos.	Unit Price†	Total Price	Deliver
3000 hp. Diesel Electric Locomotive Model P30CH	25	Builder's Specification No. 3685, June 7, 1974 and Proposition 354D-466 dated June 7, 1974, Lessee's request for quotation X-RAD-130-01 dated 5/10/74 and Purchase Order WWJ-4171-048 dated Sept. 27, 1974 and supplements thereto.	Erie, Pennsylvania	700 through 724 (both inclusive)	\$600,468	\$15,011,700	4 Locomotives in June, 1975; 11 Locomotives in July, 1975; 10 Locomotives in August, 1975

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\*The term "unit of Equipment" as used in this Equipment Lease shall mean a locomotive described above, including the signal equipment installed therein.

†Exclusive of fuel and freight.

## SCHEDULE B

### SCHEDULE OF CASUALTY VALUE

**CASUALTY VALUE:** The following per cent of the Acquisition Cost (as defined in the Equipment Lease) to the Lessor of any Unit of Equipment is to be paid on a rental payment due date pursuant to Section 11 of the Equipment Lease as the result of any Unit of Equipment becoming the subject of a Casualty Occurrence, depending upon when the Casualty Value is paid. Casualty Value does not include any amounts for which the Lessor may be entitled to indemnification under Section 4.4, 6, 9, 10.2 and 24.5 of the Equipment Lease.

Before Term Lease Commencement Date Casualty Value shall equal to 101%.

<u>If Casualty Occurrence is during semiannual period ending on rent payment date</u>	<u>Casualty Value Payable Per Unit</u>	<u>If Casualty Occurrence is during semiannual period ending on rent payment date</u>	<u>Casualty Value Payable Per Unit</u>
1.....	106.5663%	16.....	66.9819%
2.....	107.1216%	17.....	64.1116%
3.....	107.3788%	18.....	61.0598%
4.....	107.2912%	19.....	58.0510%
5.....	106.9500%	20.....	54.8599%
6.....	106.2710%	21.....	51.7251%
7.....	98.9503%	22.....	48.3840%
8.....	97.7122%	23.....	45.1135%
9.....	96.2726%	24.....	41.6198%
10.....	94.5164%	25.....	38.1897%
11.....	86.1766%	26.....	34.5392%
12.....	83.9520%	27.....	30.9581%
13.....	81.5920%	28.....	27.3520%
14.....	78.9614%	29.....	23.6760%
15.....	69.8626%	30.....	20.0000%

Thereafter—fair market value  
(as defined in the Lease)

## SCHEDULE C

### SCHEDULE OF OPTION PRICE

**OPTION PRICE:** The following per cent of the Acquisition Cost (as defined in the Equipment Lease) to the Lessor of any Unit of Equipment is to be paid pursuant to Section 16 of the Equipment Lease as the result of a default by Lessee thereunder or pursuant to Section 22.1(b) of the Equipment Lease as the result of Lessee's election to exercise its purchase option under Sections 3, 7 or 8 of the Equipment Lease. Option Price does not include any amounts for which the Lessor may be entitled to indemnification under Sections 4.4, 6, 9, 10.2 and 24.5 of the Equipment Lease.

<b>If Default or Lessee's Election to Exercise Its Purchase Option Is During Semiannual Period Ending on rent payment date</b>	<b>Amount Payable Per Unit</b>
1.....	106.5663%
2.....	107.1216%
3.....	107.3788%
4.....	107.2912%
5.....	106.9500%
6.....	106.2710%
7.....	105.3607%
8.....	104.1226%
9.....	102.6830%
10.....	100.9268%
11.....	98.9971%
12.....	96.7725%
13.....	94.4125%
14.....	91.7820%
15.....	89.0934%

<b>If Default or Lessee's Election to Exercise Its Purchase Option Is During Semiannual Period Ending on rent payment date</b>	<b>Amount Payable Per Unit</b>
16.....	86.2127%
17.....	83.3424%
18.....	80.2906%
19.....	77.2818%
20.....	74.0907%
21.....	70.9559%
22.....	67.6148%
23.....	64.3443%
24.....	60.8506%
25.....	57.4205%
26.....	53.7700%
27.....	50.1889%
28.....	46.5828%
29.....	42.9068%
30.....	39.2308%

## AGREEMENT AND ASSIGNMENT

AGREEMENT AND ASSIGNMENT dated as of June 1, 1975, between GENERAL ELECTRIC COMPANY (hereinafter called the Builder), and FEDERAL FINANCING BANK, an instrumentality of the United States of America, its successors and assigns (hereinafter called Federal Financing Bank).

WHEREAS, the Builder and NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter called the Railroad) have entered into a Conditional Sale Agreement dated as of June 1, 1975 (hereinafter called the Conditional Sale Agreement), covering the construction, sale and delivery by the Builder and the purchase by the Railroad of the railroad equipment (hereinafter called the Equipment) referred to in the Conditional Sale Agreement;

WHEREAS, a Participation Agreement dated as of June 1, 1975 ("the Participation Agreement"), has been entered into between the Railroad, the Trustee, Seattle-First National Bank, a national banking association, The Fifth Third Leasing Company, an Ohio corporation, and Union Trust Company of the District of Columbia, a company organized under the laws of the District of Columbia, and Federal Financing Bank, an instrumentality of the United States of America, regarding participation in the financing of



the above purchase, and of the terms and conditions of which the parties to this Agreement and Assignment have knowledge;

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment);

W I T N E S S E T H:

That, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Federal Financing Bank to the Builder, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained:

SECTION 1: The Builder hereby assigns, transfers and sets over unto Federal Financing Bank, its successors and assigns:

a. All the right, title and interest of the Builder in and to each Unit of the Equipment when and as severally delivered to and accepted by the Railroad under the Conditional Sale Agreement, subject to payment by the Federal Financing Bank to the Builder of the amount required to be paid under Section 4 hereof with respect thereto;

b. All the right, title and interest of the Builder in and to the Conditional Sale Agreement (except the right

to construct and deliver the Equipment and the right to receive the payments specified in Section 2.3 and in Section 3.1 and in subparagraph (a) of Section 3.3 and the last paragraph of Section 14 thereof and reimbursement for taxes paid or incurred by the Builder as provided in Section 4 thereof) and in and to any and all amounts which may be or become due or owing to the Builder under the Conditional Sale Agreement on account of the indebtedness in respect of the Purchase Price (as defined in the Conditional Sale Agreement) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the Conditional Sale Agreement, other than those hereinabove excluded; and

c. Except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the Conditional Sale Agreement;

without any recourse, however, against the Builder for or on account of the failure of the Railroad to make any of the payments provided for in, or otherwise to comply with, any of the provisions of the Conditional Sale Agreement; provided, however, that this Assignment shall not subject the Federal Financing Bank to, or transfer, or pass, or in any way affect or modify, the obligations of the Builder to construct and deliver the Equipment

in accordance with the Conditional Sale Agreement or with respect to its warranties and agreements contained or referred to in Section 13 of the Conditional Sale Agreement, or relieve the Railroad from its obligations to the Builder contained or referred to in Sections 1, 2, 3, 4, 12, 13 and 14, of the Conditional Sale Agreement, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Section 14 of the Conditional Sale Agreement, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Federal Financing Bank, in the name of Federal Financing Bank, or in the name of its nominee, or in the name of and as attorney hereby irrevocably constituted for the Builder, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Federal Financing Bank is or may become entitled under this Assignment and compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Federal Financing Bank.

SECTION 2: The Builder agrees that it shall construct the Equipment in full accordance with the Conditional Sale Agreement

(including Schedules A and B thereto) and will deliver the same upon completion to the Railroad in accordance with the provisions of the Conditional Sale Agreement; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the Conditional Sale Agreement set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Federal Financing Bank and the Railroad that at the time of delivery of each Unit of the Equipment under the Conditional Sale Agreement it had legal title to such Unit and good and lawful right to sell such Unit and that title to such Unit was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement; and the Builder further agrees that it will defend the title to such Unit against the demands of all persons whomsoever based on claims originating prior to the delivery of such Unit by the Builder under the Conditional Sale Agreement; all subject, however, to the provisions of the Conditional Sale Agreement and the rights of the Railroad thereunder. The Builder will not deliver any of the Equipment to the Railroad under the Conditional Sale Agreement until the filings and recordations referred to in Section 18 of the Conditional Sale Agreement have been effected (the Builder and its counsel being entitled to rely on advice from the Railroad that such filings and recordations have been effected).

SECTION 3: The Builder agrees with the Federal Financing Bank that in any suit, proceeding or action brought by Federal Financing Bank under the Conditional Sale Agreement for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the Conditional Sale Agreement, the Builder will indemnify, protect and hold harmless the Federal Financing Bank from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the manufacture, construction, delivery or warranty thereof, or by reason of any defense, set-off, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Federal Financing Bank is conditional upon (a) the Federal Financing Bank's timely motion or other appropriate action, on the basis of Section 14 of the Conditional Sale Agreement, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Federal Financing Bank's prompt notification to

the Builder of the asserted defense, setoff, counterclaim or recoupment and the Federal Financing Bank's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

Except in cases of articles or materials specified by the Railroad and not manufactured by the Builder and in cases of designs, systems, processes, formulae or combinations specified by the Railroad and not developed or purported to be developed by the Builder, the Builder agrees, except as otherwise specifically provided in Schedule B to the Conditional Sale Agreement, to indemnify, protect and hold harmless the Federal Financing Bank from and against any and all liability, claims, costs, charges and expense, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Federal Financing Bank or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Federal Financing Bank will give prompt notice to the Builder of any such liability or claim actually known to the Federal Financing Bank and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim. The Builder agrees that any amounts payable to it by the Railroad with respect to the Equipment, whether pursuant to the

Conditional Sale Agreement or otherwise, not hereby assigned to the Federal Financing Bank, shall not be secured by any lien, charge or security interest upon the Equipment or any Unit thereof.

SECTION 4: The Federal Financing Bank, on each Closing Date fixed as provided in Section 3 of the Conditional Sale Agreement with respect to a Group (as defined in said Section 3) of the Equipment and subject to satisfaction or fulfillment of all conditions provided in the Participation Agreement, including, without limitation, all the conditions of Section 4 thereof, shall pay to the Builder an amount equal to the portion of the Purchase Price thereof which, under the terms of said Section 3, is payable in installments, provided that there shall have been delivered to the Federal Financing Bank, as provided in Section 14 of the Conditional Sale Agreement, at least three business days (as defined in said Section 3) prior to such Closing Date, (or prior to the first such Closing Date only in the case of the opinions of counsel required under paragraphs d, e and h of this Section) the following documents, in form and substance reasonably satisfactory to it and in such number of counterparts as may be reasonably requested by it:

a. A bill of sale from the Builder to the Federal Financing Bank and to the Railroad transferring to the

Federal Financing Bank a security interest in and to the Railroad legal title to (subject to the security interest of the Federal Financing Bank) the Units of the Equipment in such Group, warranting to the Federal Financing Bank and to the Railroad that at the time of delivery of such Units under the Conditional Sale Agreement the Builder had legal title to such Units and good and lawful right to sell such Units and that title to such Units was free of all claims, liens, security interests and other encumbrances of any nature except only the rights of the Railroad under the Conditional Sale Agreement, and covenanting to defend the title to such Units against the demands of all persons whomsoever based on claims originating prior to the delivery of such Units by the Builder under the Conditional Sale Agreement;

b. A Certificate or Certificates of Acceptance with respect to the Units of the Equipment in such Group as contemplated by Section 2 of the Conditional Sale Agreement;

c. An invoice of the Builder for the Units of the Equipment in such Group accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such Units;



d. A favorable opinion of counsel for the Railroad, as to the due authorization, execution and delivery of the Conditional Sale Agreement by the Railroad and as to the enforceability thereof under the laws of the District of Columbia, and (1) setting forth that (i) no approval of the Interstate Commerce Commission is necessary for the valid execution and delivery by the Railroad of the Conditional Sale Agreement or this Assignment, or if any such approval is necessary, it has been obtained, (ii) the Conditional Sale Agreement and this Assignment have been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and no other filing or recordation is necessary for the protection of the rights of the Federal Financing Bank in any state of the United States of America or in the District of Columbia, and (2) stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the corporate power and authority to own its properties and to carry on its business as now conducted;

e. A favorable opinion of General Counsel of the Department of Transportation, in form and substance satisfactory to the Federal Financing Bank, to the effect that the payment of the Conditional Sale Indebtedness (as defined

in the Conditional Sale Agreement) and interest thereon by the Railroad has been duly guaranteed by the Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation (hereinafter called the Administrator) pursuant to the Guaranty Agreement (hereinafter called the Government Guaranty), among the Administrator, Seattle-First National Bank, a national banking association, as Trustee, and the Federal Financing Bank under the provisions of the Rail Passenger Service Act, as amended, and the Government Guaranty and the guaranty of the Administrator endorsed on this Assignment have been duly executed and delivered and constitute valid, binding and enforceable general obligations of the United States of America backed by the full faith and credit of the Government of the United States, and stating that all necessary approvals of the Secretary of the Treasury have been obtained;

f. A receipt from the Builder for any payment (other than the payment being made by the Federal Financing Bank pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is made by the Federal Financing Bank with funds furnished to it for that purpose by the Railroad;

g. A duly executed copy of the Government Guaranty;  
and

h. A favorable opinion of Canadian counsel for the Railroad, prior to the first Closing Date, to the effect that the Conditional Sale Agreement and this Assignment have been duly deposited in the office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada, with notice of such deposit being given in the Canada Gazette in accordance with said Section 86 (or appropriate provision made therefor) and that no other filing or recordation is necessary for the protection of the rights of the Federal Financing Bank under such documents in Canada or in any province or territory thereof.

In giving the opinions specified herein, counsel may qualify any opinion by general reference to limitations as to enforceability as imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally. Each such legal opinion shall contain an undertaking promptly to notify the Federal Financing Bank, Trustee and its special counsel if, prior to the last Closing Date or December 31, 1975, whichever first occurs, the author of such opinion becomes aware of any changes in law or the interpretation thereof since the date of such opinion which would render such opinion incorrect in any material respect.

The Federal Financing Bank shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Section 15 of the Conditional Sale Agreement or if an event of default, or any event which with the lapse of time and/or demand provided for in the Conditional Sale Agreement could constitute an event of default, shall have occurred and be continuing under the Conditional Sale Agreement. In the event that the Federal Financing Bank shall not make any such payment, the Federal Financing Bank shall reassign to the Builder, without recourse to the Federal Financing Bank, all right, title and interest of the Federal Financing Bank in and to the Units of the Equipment with respect to which payment has not been made by the Federal Financing Bank.

SECTION 5: The Federal Financing Bank may assign all, but not less than all, of its rights under the Conditional Sale Agreement, including the right to receive any payments due or to become due to it from the Railroad thereunder subject to the provisions of Section 23 of the Conditional Sale Agreement. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Federal Financing Bank hereunder.

SECTION 6: The Builder hereby:

(a) represents and warrants to the Federal Financing Bank, its successors and assigns, that the Conditional Sale Agreement was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the Conditional Sale Agreement is, insofar as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Federal Financing Bank or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Federal Financing Bank or intended so to be; and

(c) agrees that, upon request of the Federal Financing Bank, its successors and assigns, it will execute any and all instruments which may be necessary or proper in order to discharge of record the Conditional Sale Agreement or any

other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the District of Columbia; provided, however, that the parties shall be entitled to all rights conferred as provided in Section 21 of the Conditional Sale Agreement. The terms, rights and obligations of the parties hereunder may not be changed orally, but may be changed only by an agreement in writing signed by the party against whom enforcement of such change is sought.

SECTION 8. This Assignment may be executed in several counterparts, each of which so executed shall be deemed to be an original and in each case such counterparts shall constitute but one and the same instrument. The Federal Financing Bank agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made. Although this Assignment is dated for convenience as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the Builder and the Federal Financing

Bank have caused this instrument to be executed in their respective corporate names by their respective officers thereunto duly authorized, and their respective corporate seals to be hereunto affixed and duly attested.

GENERAL ELECTRIC COMPANY

[CORPORATE SEAL]

Attest:

J. T. Hughes  
Attesting Secretary

By

C. B. Bunker  
~~Authorized Officer~~  
Manager Marketing  
Locomotive Products Department

FEDERAL FINANCING BANK

[CORPORATE SEAL]

Attest:

Richard G. Cook  
Authorized Officer

By

R. A. M. John  
Authorized Officer

GUARANTY BY DEPARTMENT OF TRANSPORTATION

<sup>Deputy</sup>  
The Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America does hereby guarantee to the Federal Financing Bank named in the foregoing Agreement and Assignment the prompt payment of the unpaid Conditional Sale Indebtedness and interest thereon under the Conditional Sale Agreement referred to in said Agreement and Assignment pursuant to and in accordance with the Guaranty Agreement dated July 16, 1975 among the Deputy Federal Railroad Administrator on behalf of the Secretary of the Department of Transportation of the United States of America, as Guarantor, Seattle-First National Bank, a national banking association, as Trustee, and said Federal Financing Bank.

By

Frank D. Hall  
Deputy Federal Railroad  
Administrator, Guarantor

COMMONWEALTH OF )  
PENNSYLVANIA )  
 ) SS.  
COUNTY OF ERIE )

On this 1st day of July, 1975, before me personally appeared C.S. Dressler, to me personally known, who being by me duly sworn, says that he is a Manager-Marketing of GENERAL ELECTRIC COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Margaret M. Frew

NOTARY PUBLIC

MARGARET M. FREW, Notary Public  
Erie, Erie Co., Pa.  
My Commission Expires June 7, 1976

My Commission Expires: \_\_\_\_\_

CITY OF WASHINGTON )  
 ) SS.  
DISTRICT OF COLUMBIA)

On this 8th day of July 1975 before me personally appeared Robert M. Forbes, to me personally known, who, being by me duly sworn, says that he is a Vice President of Federal Financing Bank, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

Dwaine P. Russell

NOTARY PUBLIC

My Commission Expires: 9/30/76



CITY OF WASHINGTON )  
 ) ss.  
DISTRICT OF COLUMBIA)

On this 17th day of JULY 1975, before me personally appeared ASATH H HALL, to me personally known, who, being by me duly sworn, says that he is the Deputy Federal Railroad Administrator, that the foregoing instrument was signed by him by authority duly delegated to him by the Secretary of Transportation; and he acknowledged that the execution of the foregoing instrument was his free act and deed as the Federal Railroad Administrator.

DEPUTY

Barry Doyle  
NOTARY PUBLIC

My Commission Expires: My Commission Expires April 30, 1977.

#### ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

NATIONAL RAILROAD PASSENGER CORPORATION hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment dated as of June 1, 1975.

NATIONAL RAILROAD PASSENGER CORPORATION

By

Don D. Brainer  
Authorized Officer

EXHIBIT E

AGREEMENT AND ASSIGNMENT dated as of \_\_\_\_\_, 1975,  
from FEDERAL FINANCING BANK to THE DEPUTY FEDERAL RAILROAD ADMINIS-  
TRATOR OF THE DEPARTMENT OF TRANSPORTATION OF THE UNITED STATES  
OF AMERICA (hereinafter called the Administrator).

WHEREAS, GENERAL ELECTRIC COMPANY (hereinafter called the  
Builder) and NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter  
called the Railroad) have entered into a Conditional Sale Agree-  
ment dated as of June 1, 1975 (hereinafter called the Conditional  
Sale Agreement), covering the construction, sale and delivery by  
the Builder and the purchase by the Railroad of the railroad  
equipment (hereinafter called the Equipment) referred to in the  
Conditional Sale Agreement;

WHEREAS, the Builder has assigned its right, title and in-  
terest in the Conditional Sale Agreement to FEDERAL FINANCING  
BANK pursuant to an Agreement and Assignment dated as of June 1,  
1975;

NOW, THEREFORE, this Agreement and Assignment (hereinafter  
called this Assignment) Witnesseth that, in consideration of the  
sum of One Dollar and other good and valuable consideration paid

by the Administrator to Federal Financing Bank, the receipt of which is hereby acknowledged:

SECTION 1. The Federal Financing Bank hereby assigns, transfers and sets over unto the Administrator, its successors and assigns all the right, title and interest of the Federal Financing Bank in and to each Unit of the Equipment subject to the Conditional Sale Agreement, and in and to the Conditional Sale Agreement and in and to any other instrument or agreement assigned to it as security for the payment of the Conditional Sale Indebtedness (except the rights reserved to the Federal Financing Bank, as defined in the Guaranty Agreement dated July 16, 1975, among the Administrator, FEDERAL FINANCING BANK and SEATTLE-FIRST NATIONAL BANK, a national banking association, as Trustee under a Trust Agreement dated as of May 1, 1975, which are not conveyed hereby and are hereby expressly reserved to the Federal Financing Bank), without any recourse, however, against the Federal Financing Bank. In furtherance of the foregoing assignment and transfer, the Federal Financing Bank hereby authorizes and empowers the Administrator, in the Administrator's own name, or in the name of the Administrator's nominee, or in the name of and as attorney hereby irrevocably constituted for the Federal Financing Bank, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Administrator is or may become entitled under this Assignment and, except as hereinabove

provided, compliance by the Railroad with the terms and agreements on its part to be performed under the Conditional Sale Agreement, but at the expense and liability and for the sole benefit of the Administrator.

SECTION 2. The Administrator may assign all of its rights under the Conditional Sale Agreement, including the right to receive payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Administrator hereunder.

SECTION 3. Although this Assignment is dated for convenience as of the date first set forth above, the actual date of execution hereof is the date stated in the acknowledgement hereto annexed.

IN WITNESS WHEREOF, the Federal Financing Bank has caused this instrument to be executed in its corporate name by its officers thereunto duly authorized, and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

FEDERAL FINANCING BANK

By \_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer

CITY OF WASHINGTON            )  
                                  ) ss.  
DISTRICT OF COLUMBIA        )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1975, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of FEDERAL FINANCING BANK; that one of the seals affixed to the foregoing instrument is the corporate seal of said FEDERAL FINANCING BANK; that said instrument was signed and sealed on behalf of said FEDERAL FINANCING BANK by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

EXHIBIT F

AGREEMENT AND ASSIGNMENT dated as of \_\_\_\_\_, 1975, from SEATTLE-FIRST NATIONAL BANK, a national banking association, as Trustee under a Trust Agreement dated as of May 1, 1975 (hereinafter called the Trustee), to THE FEDERAL RAILROAD ADMINISTRATOR OF THE DEPARTMENT OF TRANSPORTATION OF THE UNITED STATES OF AMERICA (hereinafter called the Administrator).

WHEREAS, the Trustee and NATIONAL RAILROAD PASSENGER CORPORATION (hereinafter called the Railroad) have entered into an Equipment Lease dated as of June 1, 1975 (hereinafter called the Equipment Lease), covering the leasing to the Railroad of the railroad equipment (hereinafter called the Equipment) referred to in the Equipment Lease;

NOW, THEREFORE, this Agreement and Assignment (hereinafter called this Assignment) Witnesseth that, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Administrator to the Trustee, the receipt of which is hereby acknowledged:

SECTION 1. The Trustee hereby assigns, transfers and sets over unto the Administrator, its successors and assigns, all the right, title and interest of the Trustee in and to each Unit of

the Equipment subject to the Equipment Lease, and in and to the Equipment Lease (except the Trustee's rights of indemnification contained in Sections 4.4, 6, 10.2, and 15.1 of the Equipment Lease to the extent amounts payable thereunder are not otherwise includable in the Guaranteed Lease Obligations which are hereby expressly reserved to the Trustee, however, this reservation of such rights shall not nullify the assignment of such rights to the Administrator, rather such rights may be exercised concurrently by the Administrator and the Trustee with the Trustee's claims under such rights being prior to those of the Administrator; provided, however, that the Administrator may purchase any claim of the Trustee against the Railroad under Section 10.2 of the Equipment Lease by directly extinguishing any such claim or lien), without any recourse, however, against the Trustee. In furtherance of the foregoing assignment and transfer, the Trustee hereby authorizes and empowers the Administrator, in the Administrator's own name, or in the name of the Administrator's nominee, or in the name of and as attorney hereby irrevocably constituted for the Trustee, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Administrator is or may become entitled under this Assignment and, except as hereinabove provided, compliance by the Railroad with the terms and agreements on its part to be performed under the Equipment Lease, but at the expense and liability and for the sole benefit of the Administrator.

SECTION 2. The Administrator may assign all of its rights under the Equipment Lease, including the right to receive payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Administrator hereunder.

SECTION 3. Although this Assignment is dated for convenience as of the date first set forth above, the actual date of execution hereof is the date stated in the acknowledgment hereto annexed.

IN WITNESS WHEREOF, the Trustee has caused this instrument to be executed in its corporate name by its officer thereunto duly authorized, and its corporate seal to be hereunto affixed and duly attested, all as of the date first above written.

SEATTLE-FIRST NATIONAL BANK  
a national banking association

By \_\_\_\_\_  
Authorized Officer

[Corporate Seal]

Attest:

\_\_\_\_\_  
Authorized Officer



STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 1975, before me personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, says that he is a \_\_\_\_\_ of SEATTLE-FIRST NATIONAL BANK, a national banking association, that one of the seals affixed to the foregoing instrument is the corporate seal of said association, that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors; and he acknowledged that the execution of the foregoing instrument was the free act and deed of said association.

\_\_\_\_\_  
Notary Public

[Notarial Seal]